UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 13, 2000

MCM CAPITAL GROUP, INC.
(Exact name of registrant as specified in its charter)

DELAWARE	000-26489	48-1090909
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

500 N. FIRST, HUTCHINSON, KANSAS 67501
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code (800) 759-0327

Not applicable.
(Former name or former address, if changed since last report.)

ITEM 5. OTHER EVENTS

Closing of Senior Note Financing

On January 13, 2000, MCM Capital Group, Inc. ("MCM") closed a financing transaction in which MCM issued $10 million of its senior unsecured notes (the "Debt") to a major financial institution (the "Investor"). The Debt includes the following terms:

- Interest is payable semi-annually at the rate of 12% per annum, in cash or, on any payment date on or prior to January 15, 2002, additional notes ("Interest Notes"), at MCM's option.

- The Debt matures on January 15, 2007. Interest Notes mature on July 1, 2005.

- The Debt may be redeemed without premium or penalty at any time. If there is a change in control (as defined) of MCM, MCM must offer to repurchase the Debt without premium or penalty.

- The Debt is an unsecured obligation of the Company and is guaranteed by Midland Credit Management, Inc. ("Midland Credit"), a wholly-owned subsidiary of MCM. Any other material subsidiary of MCM, other than its securitization subsidiaries, must also guarantee the Debt.

- In connection with issuance of the Debt, the Company issued a warrant to the Investor to acquire up to 428,571 shares of the Company's common stock (subject to adjustment) at a price of $0.01 per share. This warrant is not exercisable until April 12, 2000. From April 12, 2000 to October 9, 2000, the Investor can exercise the warrant for up to 50% of the common stock covered by the warrant. Beginning on October 10, 2000 through January 12, 2005, the Investor can exercise the warrant for 100% of the covered common stock. The holder was also granted certain registration rights in connection with the common stock issuable upon exercise of the warrant.

- Up to $10 million principal amount of the Debt is guaranteed by Triarc Companies, Inc. ("Triarc"), subject to reduction under certain circumstances. However, no demand or claim may be made on the guarantee prior to July 12, 2001. Triarc indirectly owns approximately 8.4% of the outstanding common stock of MCM. In addition, Nelson Peltz, Peter W. May and Eric D. Kogan, each of whom are directors of MCM and are officers and/or directors of Triarc, directly or indirectly own approximately 13.5% of the outstanding common stock of MCM. In consideration for the Guaranty, MCM paid Triarc a fee of $200,000 and issued a warrant to Triarc for the purchase of up to 100,000 shares of common stock of MCM (subject to adjustment) at $0.01 per share at any time on or before January 12, 2005. Triarc has the right to purchase the Debt from the Investor under certain circumstances. If Triarc (or any third party designated by Triarc) purchases the Debt on or prior to April 11, 2000, Triarc (or the designated third party) will receive 100% of the warrants issued to the Investor, and if Triarc (or the designated third party) purchases the Debt on or after April 12, 2000 but prior to October 9, 2000, Triarc (or the designated third party) will receive 50% of the warrants issued to the Investor.

The board of directors of MCM approved the issuances of the Debt and related transactions, and the disinterested members of the board of directors of MCM approved the payment of the fee and the issuance of the warrants to Triarc.

Under the terms of the Debt, MCM can issue up to an additional $40 million principal amount of notes ("Additional Notes") on substantially similar terms as the Debt. MCM must use the proceeds from any Additional Notes issued in excess of $25.0 million to permanently reduce certain existing indebtedness of Midland Credit. MCM is in discussions with various parties regarding the purchase of Additional Notes. However, MCM does not currently have commitments for any Additional Notes, and there can be no assurance that MCM will be able to sell any of the Additional Notes. The note purchase agreement under which the Debt was issued (the "Note Purchase Agreement") supersedes the indication of interest previously given by the Investor, which was referenced in MCM's Report on Form 10-Q for the quarter ended September 30, 1999 (the "Third Quarter 10-Q").

For further information regarding the transaction, see the documents filed as exhibits in Item 7 hereof.

Closing of Securitization Transaction

On January 18, 2000, MCM closed a securitization transaction (the "Securitization Transaction"). Midland Receivables 99-1 Corporation, a bankruptcy remote special purpose entity formed by Midland Credit, issued nonrecourse notes in the amount of $28.9 million, bearing interest at 9.63% per annum. The notes are collateralized by the securitized charged-off receivables and an initial cash reserve account of approximately $1.5 million and are insured through a financial guarantee insurance policy. The securitized receivables had an original aggregate charged-off balance of approximately $658.9 million without giving effect to recoveries or settled balances and an aggregate adjusted original cost of approximately $39.5 million. The securitization will be accounted for as a financing transaction. MCM will recognize income over the estimated life of the receivables securitized and the receivables and corresponding debt will remain on MCM's balance sheet.

Liquidity and Capital Resources

In 1999, Midland Credit was a party to three separate forward flow agreements under which it purchased substantially all of its receivables. One of these agreements terminated in November of 1999, and one terminated on December 31, 1999. Neither of these forward flow agreements was renewed. The remaining forward flow agreement terminates by its terms in February 2001. Midland Credit recently obtained an amendment to this agreement that permits termination by either party on 30 days notice, although Midland Credit agreed to pay for its January and February 2000 purchases under the agreement in advance. If Midland Credit terminates this agreement, the seller will be released from its obligation to repurchase or replace previously acquired receivables that violated certain representations and warranties contained in the forward flow agreement. If any of the receivables also breach representations in Midland Credit's securitization transactions and Midland Credit has to repurchase those receivables, it could not seek compensation or substitution from the seller and Midland Credit would ultimately be liable for any repurchase or substitution obligation under the securitization transactions. Midland Credit obtains substantially all receivables that it currently purchases and services under

this forward flow agreement. In addition, the forward flow agreement is subject to early termination by Midland Credit and the seller upon the occurrence of specific events, so there can be no assurance that the forward flow contract will remain in effect until its scheduled termination date. There can be no assurance that Midland Credit will be able to obtain a sufficient number of receivables to maintain a profitable level of collections, retain qualified personnel or sustain its current growth.

Under the Securitization Transaction, Midland Credit is prohibited from purchasing more than $3 million in the aggregate of receivables until it has obtained $10 million in additional financing. Thereafter, during any period in which Midland Credit has less than $10 million of committed and fully available financing, it may only purchase an additional $3 million in receivables. Midland Credit believes that if it obtains approximately $10 million in additional financing prior to March 15, 2000 and thereafter maintains $10 million in committed and fully available financing, it will have sufficient liquidity to continue to purchase receivables pursuant to its forward flow agreement and fund its operations and working capital needs for at least the next twelve months. There can be no assurance however that Midland Credit will be able to obtain and maintain such financing. If Midland Credit does not obtain such additional financing, it would cease making purchases of receivables under and, if necessary, terminate its forward flow agreement.

Under the Securitization Transaction, if Midland Credit does not maintain certain specified amounts of unrestricted cash and/or availability under committed working capital facilities (varying over the period to February 28, 2001 from a low of $1 million to a high of $5 million and thereafter $5 million), an event of default will occur. If an event of default occurs, Midland Credit may be removed as servicer and the receivables in the Securitization Transaction can be liquidated to pay off the related notes issued in the securitization. The note insurer for the securitization (or noteholders under certain circumstances) can waive the event of default or elect not to remove Midland Credit as the servicer or to liquidate the receivables. In addition, under the Securitization Transaction, the note insurer or other controlling party must reappoint Midland Credit as the servicer prior to the end of each quarter. Should such an event of default occur, Midland Credit believes that it would have sufficient liquidity to fund its operations and working capital needs through at least December 2000, provided (i) the event of default is waived or the election is made not to remove Midland Credit as the servicer or liquidate the receivables, (ii) the controlling party continues to reappoint Midland Credit as the servicer on a quarterly basis, and (iii) Midland Credit ceases making purchases of receivables. If, however, the controlling party does not reappoint Midland Credit as servicer or an event of default occurs, including Midland Credit's inability to maintain the required liquidity or any event of default under any securitization transaction insured by the note insurer, and the controlling party removes Midland Credit as servicer or liquidates the receivables, MCM or Midland Credit may be required to, among other things, (i) cease making purchase of receivables and, if necessary, terminate its forward flow agreement, (ii) reduce future capital expenditures scheduled for computer, telephone and system upgrades, (iii) sell certain of its receivables portfolios for cash, (iv) reduce the number of employees and overall scope of operations, (v) pursue strategic alternatives such as a sale, merger or recapitalization of MCM or Midland Credit, or (vi) seek protection under reorganization, insolvency or similar laws. In addition, if an event of default under the Securitization Transaction occurs and is continuing, and the controlling party removes Midland Credit as servicer, that would also cause an event of default under the Debt.

Reference is made to the Third Quarter 10-Q for additional information about MCM's commitments and contingencies.

Legal Proceedings

As disclosed in the Third Quarter 10-Q, Varmint Investments Group, LLC and Panagora Partners, LLC filed suit against Midland Credit on July 22, 1998 in the United States District Court for the Southern District of Texas, Houston Division. The plaintiffs allege securities fraud, common law fraud, and fraudulent inducement based upon the sale of receivables by Midland Credit to the plaintiffs in 1997. The plaintiffs seek recovery of the purchase prices for the receivables, or approximately $1.3 million and, in addition, other damages, including exemplary or punitive damages, attorneys' fees, expenses, and court costs. Midland Credit has denied the allegations and is vigorously defending this suit. On November 8, 1999 the court issued orders denying Midland Credit's motion for summary judgment and a motion by Midland Credit to assert certain counterclaims. The trial, originally scheduled for January 10, 2000, has been rescheduled for April 3, 2000. Although any litigation is inherently uncertain, Midland Credit believes it has certain contractual defenses to the asserted claims. Notwithstanding the foregoing, a judgment adverse to Midland Credit involving this litigation could have a material adverse impact on MCM's business and its financial condition.

Forward Looking Statement Disclaimer

The statements in this report that are not historical facts, including most importantly, those statements preceded by, or that include the words "may," "believes," "expects," "anticipates," or the negation thereof, or similar expressions, constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve risks, uncertainties and other facts which may cause the actual results, performance or achievements of MCM and its subsidiaries to be materially different from any future results, performance or achievements express or implied by such forward-looking statements. Such factors include, but are not limited to, the following: MCM's ability to obtain sufficient quantities of receivables at favorable prices and to recover sufficient amounts on receivables to fund operations; MCM's ability to hire and retain qualified personnel to recover its receivables efficiently; the availability of financing; MCM's ability to maintain sufficient liquidity to operate its business; MCM's continued servicing of the receivables in its securitization transactions; unexpected costs associated with Year 2000 compliance or the business risk associated with Year 2000 non-compliance by suppliers; changes in, or failure to comply with, government regulations; the costs, uncertainties and other effects of legal and administrative proceedings and other risks and uncertainties detailed in MCM's Securities and Exchange Commission filings. MCM will not undertake and specifically declines any obligation to publicly release the result of any revisions to any forward-looking statements to reflect events or circumstances after the date of such statements or unanticipated events. In addition, it is MCM's policy generally not to make any specific projections as to future earnings, and MCM does not endorse any projections regarding future performance that may be made by third parties.

ITEM 7. EXHIBITS

10.1 Note Purchase Agreement dated as of January 12, 2000 between MCM and ING (U.S.) Capital LLC ("ING")

10.2 Warrant Agreement dated as of January 12, 2000 between MCM and ING

10.3 Warrant Agreement dated as of January 12, 2000 between MCM and Triarc Companies, Inc. ("Triarc").

10.4 Registration Rights Agreement dated as of January 12, 2000 between MCM and ING

10.5 Registration Rights Agreement dated as of June 30, 1999 among MCM, C.P. International Investments Limited, MCM Holding Company, LLC, and other persons

10.6 Subsidiary Guaranty dated as of January 12, 2000

10.7 Guaranty and Option Agreement dated as of January 12, 2000 between Triarc and ING

10.8 First Amendment to Loan Sale Agreement between Midland Credit Management, Inc. and MBNA America Bank N.A., dated as of January 13, 2000

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MCM CAPITAL GROUP, INC.

Date: January 20, 2000 By: /s/ R. Brooks Sherman, Jr.

R. Brooks Sherman, Jr.
Executive Vice President,
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

EXHIBIT INDEX

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EXHIBIT 10.1

[EXECUTION COPY]

NOTE PURCHASE AGREEMENT,

dated as of January 12, 2000,

between

MCM CAPITAL GROUP, INC.

as the Issuer,

and

ING (U.S.) CAPITAL LLC,

as the Purchaser,

for

$10,000,000 Principal Amount of

12.0% Series No. 1 Senior Notes due January 15, 2007

and

Warrants to Purchase 428,571 Common Shares.

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NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT, dated as of January 12, 2000, between MCM CAPITAL GROUP, INC., a Delaware corporation (the "Company") and ING (U.S.) CAPITAL LLC, a Delaware limited liability company (alternatively, "ING" or the "Purchaser"),

W I T N E S S E T H:

WHEREAS, the Company desires to obtain financing for the purchase of charged-off accounts, the making of acquisitions in the Company's existing lines of business and lines of business reasonably related thereto, and working capital and general corporate purposes; and

WHEREAS, the Company has authorized the sale to the Purchaser, and the Purchaser is willing on the terms and conditions hereinafter set forth (including Article III) to purchase, directly or through nominees, on the Closing Date:

(a) $10,000,000 principal amount of 12.0% senior promissory notes in the form of Exhibit A hereto due January 15, 2007; and

(b) Warrants to purchase 428,571 of the Common Shares of the Company at an exercise price of $0.01 per share;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Defined Terms. The following terms (whether or not italicized) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"1998 Audited Financial Statements" is defined in clause (a) of Section 5.4.

"1999 Interim Financial Statements" is defined in clause (c) of Section 5.4.

"Affiliate" means, relative to any Person, any other Person which, directly or indirectly, controls or is controlled by or under common control with such Person (excluding, however, any trustee under, or any committee with responsibility for administering, any Plan). For the purposes of this definition, "control" (including the correlative terms "controlling", "controlled by" and "under common control with") means, relative to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise; provided, however, that (x) beneficial ownership of 15% or more of the

Voting Stock of a Person shall be deemed to be control and (y) any of the foregoing to the contrary notwithstanding, the term "Affiliate," relative to the Company and Subsidiaries, shall not include ING.

"this Agreement" means, on any date, this Purchase Agreement as originally in effect and as thereafter from time to time amended, supplemented or otherwise modified in accordance with the terms hereof and in effect on such date.

"Applicable Law" means, relative to any Person, (x) all provisions of laws, statutes, ordinances, rules, regulations, requirements, restrictions, permits, certificates or orders of any Governmental Authority applicable to such Person or any of its assets or property and (y) all judgments, injunctions, orders and decrees of all courts in proceedings or actions in which such Person is a party or by which any of its assets or properties are bound.

"Approval" means, relative to any Person, each approval, license, permit, consent, exemption, filing or registration by or with any Governmental Authority (x) necessary to authorize or permit the execution, delivery or performance of, or for the validity or enforceability of, any Transaction Document or (y) that the failure to have or obtain would have a Materially Adverse Effect on its conduct of its business.

"Assignment and Acceptance" is defined in Section 4.7.

"Authorized Officer" means, relative to any Obligor, those of its officers whose signatures and incumbency shall have been certified to the Purchaser pursuant to clause (a)(ii) of Section 3.2. or Section 3.5.

"Bank of America Credit Agreement" means the credit agreement dated as of July 15, 1999, between Bank of America, N.A. and Midland, as in effect on the Closing Date or as amended thereafter in accordance with Section 6.2.4.

"Bank of America Indebtedness" means all Indebtedness of the Company or Midland under the Bank of America Credit Agreement, or any refinancing or replacement thereof effected in accordance with Section 6.2.4.

"Business Day" means any day, excluding, however, a Saturday, Sunday and each legal holiday on which banks are authorized or required to close in New York, New York or the State of Kansas.

"Capitalized Lease Liability" means, relative to any Person, any monetary obligation under any leasing or similar arrangement which, in accordance with GAAP, is classified as a capitalized lease, and, for purposes of this Agreement and each other Purchase Document, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP, and the stated maturity thereof shall be determined in accordance with GAAP.

"Capital Stock" means, relative to any Person, any and all shares, partnership or membership interests, participations, rights or other equivalents (however designated) of corporate stock, including (w) capital shares of such Person (whether voting or non-voting), (x) if such Person is a partnership, capital partnership interests (whether general or limited), (y) any other indicia of ownership of such Person (z) and all warrants, options, purchase rights, conversion or exchange rights, voting rights, calls or any claims of any character with respect thereto.

"Cash Equivalent Investment" means any investment of the following nature:

(a) obligations issued or guaranteed by the United States of America;

(b) certificates of deposit, overnight time deposits, bankers acceptances and other "money market instruments" issued by any bank or trust company organized under the laws of the United States of America or any State thereof and (x) whose deposits are insured by the Federal Deposit Insurance Corporation or (y) having capital and surplus in an aggregate amount of not less than $100,000,000;

(c) open market commercial paper bearing the highest credit rating for such obligations issued by S&P or Moody's or by another nationally recognized credit rating firm;

(d) repurchase agreements entered into with any bank or trust company organized under the laws of the United States of America or any State thereof and having capital and surplus in an aggregate amount of not less than $100,000,000 relating to United States of America government obligations;

(e) shares of "money market funds", each having net assets of not less than $100,000,000; and

(f) other short-term investments calculated in accordance with GAAP;

in each (other than clause (f) above) case maturing or being due or payable in full not more than 180 days after the Company's acquisition thereof.

"Certificate of Incorporation" means the certificate of incorporation of the Company in the form furnished to the Purchaser prior to the execution and delivery of this Agreement, together with all amendments thereto as of the Closing Date.

"Change of Control" means:

(a) the sale, lease or transfer of all or substantially all the assets of the Company to any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) other than any of the Significant Stockholders;

(b) the liquidation or dissolution of (or the adoption of a plan of liquidation by) the Company; or

(c) the acquisition by any Person or affiliated group (other than any of the Significant Stockholders) of a direct or indirect majority in interest (more than 50%) of the issued and outstanding Voting Stock of the Company by way of merger or consolidation or otherwise.

"Closing" is defined in Section 2.3.

"Closing Date" is defined in Section 2.3.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Common Share" means a share of common stock, $0.01 par value per share, of the Company as authorized by the Certificate of Incorporation.

"Company" is defined in the preamble.

"Company's Knowledge" means, at any time and relative to any matter, knowledge which any Authorized Officer of the Company would have after reasonable inquiry, under the circumstances, of the current employees of the Company or any Subsidiary who would reasonably be expected to have knowledge regarding such matter, whether or not such Authorized Officer actually made inquiry of such employees.

"Contingent Liability" means, relative to any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's Contingent Liability shall (subject, however, to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness, obligation or other liability guaranteed thereby.

"Contractual Undertaking" means, relative to any Person, any provision of any debt or equity security issued by it or of any Instrument or undertaking to which it is a party or by which it or any of its property is bound or subject.

"Controlled Group" means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under Section 414(b) or 414(c) of the Code or section 4001(b)(1) of ERISA.

"Default" means any Event of Default or any act, condition or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Disclosure Schedule" means Schedule I hereto.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is covered by ERISA and (x) which is currently maintained or contributed to by the Company, (y) which was at any time during the last six years maintained, contributed to or terminated by the Company or (z) with respect to which there is any potential or outstanding liability of the Company.

"Environmental Claim" is defined in clause (b) of Section 5.16.

"Environmental Law" means all present and future Applicable Laws imposing liability or standards of conduct relating to the environment, industrial hygiene, land use or the protection of human health and safety, natural resources, pollution (including Hazardous Materials) or waste management.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"Event of Default" is defined in Section 7.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"First Registration Agreement" means that certain registration rights agreement, dated June 30, 1999, among the Company, and the other parties that are a party thereto.

"Fiscal Quarter" or "FQ" means any period of three consecutive calendar months comprising a quarter of a Fiscal Year; references to a Fiscal Quarter with numbers corresponding to a calendar year and a number corresponding to a Fiscal Quarter (e.g., "1999 FQ 1") refer to such Fiscal Quarter (i.e., the first) of such Fiscal Year.

"Fiscal Year" or "FY" means a period of 12 consecutive calendar months ending on each December 31st; references to a Fiscal Year with a number corresponding to any calendar year (e.g., "the 1999 Fiscal Year" or "1999 FY") refer to the Fiscal Year ending on December 31st of such calendar year.

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" is defined in Section 1.4.

"Governmental Authority" means any international, national, federal, state, provincial, local, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States or foreign.

"Hazardous Material" means:

(a) any substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", "contaminants", "pollutants" or any other formulation intended to define, list or classify substances by reason of adverse effects on the environment or deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity or "TLCP" toxicity or "EP" toxicity;

(b) any oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(c) any flammable substances or explosives or any radioactive materials; or

(d) any asbestos in any form or electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

"Hedging Liability" means, relative to any Person, all liabilities of such Person under interest rate and currency swap, cap and collar agreements and all other Instruments designed to protect such Person against fluctuations in interest or currency exchange rates.

"herein", "hereof", "hereto", "hereunder" and similar terms contained in this Agreement or any other Purchase Document refer to this Agreement or such other Purchase Document, as the case may be, as a whole and not to any particular Article, Section, paragraph or provision of this Agreement or such other Purchase Document.

"holder" is defined, relative to a Series No. 1 Note, in Section 4.7.4.

"including" means including without limiting the generality of any description preceding such term.

"Indebtedness" means, relative to any Person, without duplication:

(a) all obligations of such Person for borrowed money (including all notes payable and drafts accepted representing extensions of credit) and all obligations evidenced by bonds, debentures, notes or other similar instruments on which interest charges are customarily paid;

(b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and bankers' acceptances issued for the account of such Person;

(c) all Capitalized Lease Liabilities of such Person;

(d) net monetary liabilities of such Person under all Hedging Liabilities (calculated, at any time, as the aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if the agreements giving rise to such Hedging Liabilities were terminated at such time);

(e) all obligations of such Person to pay the deferred purchase price of property or services that, in accordance with GAAP, would be included on the liability side of the balance sheet of such Person as of the date at which Indebtedness is to be determined;

(f) all indebtedness referred to in clause (a), (b), (c), (d) or (e) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided, however, that in the case of any such Indebtedness which is by its terms non-recourse to such Person, the amount of such Indebtedness shall, for the purpose of this clause, be deemed to be the lesser of (x) the aggregate unpaid principal amount of such Indebtedness and (y) the fair market value of the property subject to such Lien, as determined by such Person in good faith; and

(g) all Contingent Liabilities of such Person in respect of any Indebtedness of any other Person.

"Indemnified Liabilities" is defined in Section 8.4.

"Indemnified Party" is defined in Section 8.4.

"ING" is defined in the preamble.

"Institutional Holder" means the Purchaser (so long as it or its nominee shall hold a Series No. 1 Note or other Subject Security) and each other financial institution which shall hold a Series No. 1 Note or other Subject Security (excluding, however, any financial institution which is not a Noteholder and acquired the other Subject Securities held by it in a distribution to the public or a sale pursuant to Rule 144A under the Securities Act or as the direct or indirect transferee of other Subject Securities acquired in such a distribution or sale).

"Instrument" means any contract, agreement, indenture, mortgage, document or other writing (whether by formal agreement, letter or otherwise) under which any obligation is evidenced, assumed or undertaken or any Lien (or right or interest therein) is granted or perfected.

"Intellectual Property" is defined in Section 5.13.

"Investment" means, relative to any Person, all investments by such Person in any other Person (including Affiliates) in the forms of (v) loans, advances (excluding, however, commission, travel, indemnity and similar advances to officers, directors and employees of such Person made in the ordinary course of business), (w) Contingent Liabilities of such Person incurred with respect to Indebtedness of any other Person, (x) capital contributions, purchases or other acquisitions for consideration of Indebtedness, equity interests or other securities, (y) payments in respect of tax savings or liabilities made by such Person to or for the benefit of any other Person with whom such Person files a consolidated tax return which are not reimbursed by such other Person and (z) any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity, or distributions or dividends paid, thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair value of such property at the time of such Investment.

"Lien" means (x) any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other) or preference, priority or other security agreement, whether or not filed, recorded or otherwise perfected under Applicable Law to secure any Indebtedness, (y) any financing statement filed under the Uniform Commercial Code (or comparable law of any jurisdiction), other than to perfect the sale or purchase of accounts, and (z) any option or other agreement to sell or to provide any Instrument or financing statement of the nature referred to in item (x) or (y).

"Material Contracts" means the agreements and contracts that are required to be filed by the Company pursuant to Item 601 of Regulation S-K as an exhibit to any report, registration statement or other filing under the Securities Act or the Exchange Act.

"Material Subsidiary" means any Subsidiary of the Company that owns or otherwise holds tangible assets of $10,000 or more.

"Materially Adverse Effect" means (x) a material adverse effect on the financial condition, business, assets, operations or properties of the Company and Subsidiaries, taken as a whole, (y) a material impairment of the ability of any Obligor to perform its respective payment obligations under the Purchase Documents to which it is or will be a party or (z) an impairment of the validity or enforceability of, or a material impairment of the rights, remedies or benefits available to the Noteholders under, this Agreement or any other Purchase Document.

"Midland" means Midland Credit Management, Inc.

"Non-U.S. Noteholder" is defined in Section 4.10.

"Noteholder" means at any time each Person (including the Purchaser) then registered in accordance with Section 2.3, 4.8 or 4.9 as the owner or holder of a Series No. 1 Note; provided, however, that no Person which is an Affiliate of the Company (other than Triarc Companies, Inc. or its designee, excluding the Company and its Subsidiaries) shall be deemed to be a Noteholder for purposes of Section 8.1 or any other action requiring the consent, concurrence or other action of each Noteholder.

"Notice of Redemption" is defined in Section 4.7.

"Obligation" means all obligations of the Company with respect to the repayment or performance of all obligations (monetary or otherwise) of the Company arising under or in connection with the Series No. 1 Notes or under this Agreement or any other Purchase Document in respect of the Series No. 1 Notes, the Indebtedness evidenced thereby or to any Person as the holder of a Series No. 1 Note.

"Obligor" means the Company or any Subsidiary Guarantor.

"Operating Lease" is defined in Section 6.2.8.

"Optional Redemption Price" means, for any portion of the outstanding principal amount of any Series No. 1 Note, the outstanding principal amount of such portion of the Series No. 1 Note.

"or" is not exclusive.

"Organizational Document" means, relative to any Person, each instrument that (x) defines its corporate existence, including its articles or certificate of incorporation, as filed or recorded with an applicable Governmental Authority or (y) governs its internal affairs, including its by-laws and all shareholder agreements, voting trusts and similar arrangements to which it is a party applicable to any of its authorized shares of Capital Stock, in each case as amended, supplemented or restated.

"outstanding" means, at any time relative to the Series No. 1 Notes, any Series No. 1 Notes theretofore issued pursuant to Section 2.3, 4.8 or 4.9 and not surrendered pursuant to Section 4.8 or 4.9 but excluding, however, all Series No. 1 Notes which are deemed pursuant to Section 4.9 to be not outstanding.

"Payment Date" means the 15th day of each January and July, commencing July 15, 2000 or, if any such day is not a Business Day, the next succeeding Business Day.

"Payment or Insolvency Default" means a Default pursuant to Section 7.1.1 or 7.1.3.

"Permitted Lien" means the following types of Liens (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA):

(a) Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time, required by Section 6.1.7;

(b) statutory Liens of landlords, Liens of carriers, warehousemen, mechanics, suppliers, materialmen and repairmen and other like Liens arising in the ordinary course of business for sums not yet more than 10 days delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(c) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (excluding, however, obligations for the payment of borrowed money);

(d) leases or subleases granted to others not interfering in any material respect with the ordinary conduct of the business of the Company or any Subsidiary;

(e) easements, rights-of-way, restrictions (including zoning restrictions), minor defects, encroachments or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the ordinary conduct of the business of the Company or any Subsidiary;

(f) any (w) interest or title of a lessor or sublessor under any lease, (x) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to, (y) subordination of the interest of the lessee or sublessee under such lease to any restriction or encumbrance referred to in item (x) or (z) Liens arising from filing Uniform Commercial Code financing statements regarding leases;

(g) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(h) Liens (including extensions, renewals and replacements thereof) upon property acquired (the "acquired property") by the Company or any Subsidiary after the Closing Date; provided, however, that (w) any such Lien is created solely for the purpose of securing Indebtedness representing, or incurred to finance, refinance or refund, the cost (including the cost of construction) of the acquired property, (x) the principal amount of the Indebtedness secured by such Lien does not exceed 100% of the cost of the acquired property, (y) such Lien does not extend to or cover any property other than the acquired property and any improvements on such

acquired property and (z) the incurrence of the Indebtedness to purchase the acquired property is permitted by Section 6.2.2;

(i) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements;

(j) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Company or any Subsidiary in the ordinary course of business;

(k) judgment and attachment Liens not giving rise to an Event of Default; and

(l) additional Liens granted by the Company or any Subsidiary at any one time outstanding in respect of properties or assets having, on the date such Lien is granted, an aggregate fair market value not to exceed $100,000.

"Person" means any natural person, corporation, firm, association, partnership, limited liability partnership, limited liability company, government, trust, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

"PIK Notes" is defined in clause (b) of Section 4.4.

"Plan" means (x) a "pension plan," as such term is defined in section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a multiemployer plan as defined in section 4001(a)(3) of ERISA), and to which the Company or any corporation, trade or business that is, along with the Company, a member of a Controlled Group, may have liability, including any liability by reason of having been a substantial employer within the meaning of section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under section 4069 of ERISA or (y) a "welfare plan," as such term is defined in section 3(1) of ERISA.

"Purchase Document" means this Agreement, the Series No. 1 Notes, the Warrant Agreement, the Subsidiary Guaranty and each other Instrument executed and delivered from time to time by the Company or any Subsidiary to the Purchaser or any other Noteholder pursuant hereto, whether or not mentioned herein.

"Purchaser" is defined in the preamble.

"Ratably" means, relative to the Noteholders, ratably according to the aggregate outstanding principal amount of all Series No. 1 Notes held by each Noteholder.

"Registration Agreement" means that certain Registration Rights Agreement, dated as of January 12, 2000, by and between the Company and the Purchaser.

"Reimbursement Agreement" means the reimbursement agreement, dated as of January 12, 2000, between the Company and Midland.

"Required Noteholders" means, at any time, Noteholders owning more than 50% of the then outstanding principal amount of the Series No. 1 Notes; provided, however, that any Series No. 1 Note

which from time to time is held by any Affiliate of the Company (other than Triarc Companies, Inc. or any of its designees, excluding the Company and its Subsidiaries) shall be deemed to be not outstanding for all purposes of (x) Sections 7.3 and 8.1 and (y) any other determination to be made by, or action to be taken by or at the direction of, the Required Noteholders.

"Residual Transaction" is defined in clause (e) of Section 6.2.2.

"Restricted Payment" means

(a) relative to any Capital Stock of the Company,

(i) any dividend or other distribution (in cash, property or obligations), direct or indirect, by the Company on account of (x) any shares of any class of such Capital Stock (now or hereafter outstanding) or (y) any warrants, options or other rights with respect to any shares of any class of such Capital Stock (now or hereafter outstanding), excluding, however, in each case, dividends or distributions payable in such Capital Stock, or warrants to purchase such Capital Stock, or split-ups or reclassifications of such Capital Stock into additional or other shares of its Capital Stock,

(ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, by the Company or any Subsidiary of any shares of any class of such Capital Stock (now or hereafter outstanding), and

(iii) any payment by the Company or any Subsidiary made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of such Capital Stock now or hereafter outstanding;

(b) any payment or prepayment by the Company or any Subsidiary of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Indebtedness subordinated in right of payment to the Obligations; and

(c) any deposit to fund any of the foregoing.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Securitization Subsidiary" means any of Midland Receivables 98-1 Corporation, Midland Receivables 99-1 Corporation or Midland Funding 98-A Corporation or any other bankruptcy-remote Subsidiary created or acquired by the Company or any Subsidiary for the purpose of securitizing or otherwise selling, pledging or borrowing against charged-off accounts in the ordinary course of business.

"Securitization Transaction" means any transaction or series of transactions by or through a Securitization Subsidiary for the purpose of securitizing or otherwise selling, pledging or borrowing against charged-off accounts in the ordinary course of business.

"Series No. 1 Note" means each 12.0% senior promissory note of the Company issued on the Closing Date in accordance with Section 2.3, and any PIK Notes issued pursuant to Section 4.4, in each case substantially in the form of Exhibit A hereto (as such note may be amended, endorsed or otherwise modified from time to time) and all other notes accepted from time to time in substitution, replacement or renewal therefor, including pursuant to Section 4.8 or 4.9.

"Significant Stockholders" means, collectively, Nelson Peltz, Peter W. May, Triarc Companies, Inc., C.P. International Investments Limited, Peter N.S. Frazer and Frank Chandler, or any of their Affiliates.

"Subject Security" means all Series No. 1 Notes and other securities purchased on the Closing Date pursuant to Section 2.3, together with all other securities issued in replacement or exchange therefor or as a distribution thereon.

"Subsidiary" means, relative to any Person, (x) any corporation, association or other business entity more than 50.0% of the outstanding shares of Voting Stock of which is owned directly or indirectly by such Person and (y) any partnership in which such Person is a general partner (but not including any trust unless the applicable Person owns more than 50% beneficial interest therein as evidenced by issued certificates). Except as otherwise indicated herein, references to Subsidiaries refer to Subsidiaries of the Company.

"Subsidiary Guaranty" is defined in Section 6.1.6.

"Subsidiary Guarantor" means each Subsidiary that shall from time to time after the Closing Date become a party to the Subsidiary Guaranty in accordance with Section 6.1.6.

"Tax" is defined in Section 4.10.

"Transaction" means collectively:

(a) the issuance by the Company of the Subject Securities in accordance with this Agreement; and

(b) all of the other transactions contemplated by the parties hereto (including in accordance with Article III) to occur on the Closing Date, including the payment of Transaction Costs.

"Transaction Cost" means any reasonably incurred fee, cost or expense payable by the Company or any Subsidiary in connection with the Transaction.

"Transaction Documents" means the Purchase Documents, the Registration Agreement and all documents, certificates and Instruments delivered in connection with any thereof.

"Voting Stock" means, relative to any Person, Capital Stock of any class or kind, including any Capital Stock of such Person of any other class or kind which is then convertible into Capital Stock of such class or kind, ordinarily having the power to vote (and irrespective of whether at the time Capital Stock of such Person of any other class or kind shall or might upon the occurrence of a contingency have voting power) for the election of directors, managers or other voting members of the governing body of such Person.

"Warrant" means a warrant issued by the Company substantially in the form of Attachment 1 to the Warrant Agreement (as such warrant may be amended, endorsed or otherwise modified from time to time) and all other warrants accepted from time to time in substitution, replacement or renewal therefor, including pursuant to Section 2.2 or 2.3 thereof.

"Warrant Agreement" means an agreement between the Company and the Purchaser substantially in the form of Exhibit E hereto as such agreement may be amended, waived or otherwise modified from time to time in accordance with its terms.

"wholly-owned Subsidiary" means, relative to any Person, any Subsidiary of such Person all of the Capital Stock (and all rights and options to purchase such Capital Stock) of which, other than directors' qualifying shares, are owned, beneficially and of record, by such Person or its wholly-owned Subsidiaries.

"Year 2000 Problem" means, relative to any Person, any significant risk that computer hardware, software or equipment containing embedded microchips used in its businesses or operations will not, in the case of dates of time periods occurring after December 31, 1999, function at least as effectively as in the case of dates or time periods occurring prior to January 1, 2000.

SECTION 1.2 Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in the Disclosure Schedule, each Series No. 1 Note and any other Purchase Document or any notice or other communication delivered from time to time in connection with any Purchase Document.

SECTION 1.3 Cross References. Unless otherwise specified, references in this Agreement and in each other Purchase Document to any Article or Section are references to such Article or Section of this Agreement or such other Purchase Document, as the case may be, and unless otherwise specified, references in any Article, Section or definition to any item or clause are references to such item or clause of such Article, Section or definition.

SECTION 1.4 Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used herein or in any other Purchase Document shall be interpreted, all accounting determinations and computations hereunder or thereunder for periods after the Closing Date shall be made and all financial statements required to be delivered hereunder or thereunder shall be prepared, in accordance with generally accepted accounting principles ("GAAP") (subject, however, in the case of financial information as at the close of any period other than a Fiscal Year, to the absence of footnotes and year-end adjustments) as in effect at such time and applied consistently with the 1998 Audited Financial Statements (except as disclosed therein).

ARTICLE II

PURCHASE AND SALE OF SECURITIES

SECTION 2.1 Purchase Commitment. The Purchaser hereby agrees, subject, however, to the terms and conditions of this Agreement (including Article III), to purchase from the Company, and the Company hereby agrees to sell to the Purchaser, at the Closing the following securities:

(a) $10,000,000 principal amount of Series No. 1 Notes, at par; and

(b) for consideration of $10.00, a Warrant to purchase 428,571 of the Company's Common Shares, exercisable for a period of five years at an exercise price of $0.01 per share.

SECTION 2.2 Issue Price. The Company and the Purchaser agree that, for purposes of section 1271 et seq. of the Code, the issue price of each Series No. 1 Note and the issue price of the Warrant shall be determined by the Company in good faith and shall be provided to the Purchaser promptly thereafter but in no event more than 45 days after the Closing Date.

SECTION 2.3 Closing. The purchase of the Series No. 1 Notes and the other Subject Securities shall take place at a closing (the "Closing") at the offices of Mayer, Brown & Platt, 1675 Broadway, New York, New York, at 10:00 a.m., local time, on January 12, 2000 or such other Business Day as may be agreed upon by the Company and the Purchaser (the "Closing Date"). At the Closing, the Company will deliver to the Purchaser:

(a) a single Series No. 1 Note (or such greater number of Series No. 1 Notes as the Purchaser may request) in the aggregate principal amount set forth in clause (a) of Section 2.1, dated the Closing Date, and registered in the Purchaser's name (or in the name of one or more nominees of the Purchaser), and

(b) a Warrant (or such greater number of Warrants as the Purchaser may request) representing in the aggregate the right to purchase the number of Common Shares set forth in clause (b) of Section 2.1, dated the Closing Date, and registered in the Purchaser's name (or in the name of one or more nominees of the Purchaser),

each against delivery by the Purchaser to the Company of immediately available funds in the amount of the purchase price therefor. If, at the Closing, the Company shall fail to tender to the Purchaser the Subject Securities as provided in this Section or any of the conditions specified in Article III shall not have been fulfilled to the Purchaser's reasonable satisfaction, the Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any other rights the Purchaser may have by reason of such failure or such nonfulfillment.

ARTICLE III

CONDITIONS TO CLOSING

The Purchaser's obligation to purchase and pay for the Subject Securities is subject, however, to the fulfillment, to the Purchaser's satisfaction, prior to, at or concurrently with the Closing, of all of the following conditions:

SECTION 3.1 Certificate of Incorporation. Each of the following shall have occurred (and the Purchaser shall have received from the Company a certificate, dated the Closing Date, of its Secretary or Assistant Secretary substantially in the form of Exhibit B hereto confirming inter alia that):

(a) the Company shall have adopted and duly filed with the Secretary of State of Delaware the Certificate of Incorporation; and

(b) no further amendments or modifications thereto shall have been adopted or filed.

SECTION 3.2 Resolutions, etc. The Purchaser shall have received:

(a) from the Company, a certificate, dated the Closing Date, in the form of Exhibit C hereto as to:

(i) resolutions of its Board of Directors then in full force and effect authorizing in the case of the Company, the issuance of the Subject Securities and the execution, delivery and performance of this Agreement and each other Purchase Document to be executed by it, and

(ii) 3.2.0.1.2. the incumbency and signatures of those of its officers authorized to act with respect to this Agreement and each other Purchase Document executed by it;

(b) duly executed and delivered counterparts of the Registration Agreement; and

(c) the balance sheets and financial statements identified in clauses (a) through (d) of Section 5.4 together with all other financial information reasonably requested by the Purchaser, who shall be satisfied with the same in its sole discretion.

SECTION 3.3 Series No. 1 Note. The Company shall have executed and delivered to the Purchaser a Series No. 1 Note, dated the Closing Date, in the original principal amount provided in clause (a) of Section 2.1 with interest payable thereon at the rates determined in accordance with Section 4.4.

SECTION 3.4 Warrants. The Company shall have exchanged duly executed counterparts of the Warrant Agreement with the Purchaser and shall have issued pursuant thereto to the Purchaser, a Warrant, dated the Closing Date, for the number of Common Shares provided in clause (b) of Section 2.1.

SECTION 3.5 Guaranties. The Purchaser shall have received from each Subsidiary Guarantor, a duly authorized and executed Subsidiary Guaranty, together with appropriately completed certificates similar in form and substance to Exhibits B and C hereto.

SECTION 3.6 Material Contracts. The Purchaser shall have received from the Company true, correct and completed copies of all Material Contracts (including but not limited to the Reimbursement Agreement, the First Registration Agreement, the indenture and servicing agreements for all Securitization Transactions as of the Closing Date, and the Bank of America Credit Agreement) as executed by the parties thereto, including all schedules thereto appropriately completed. The Material Contracts, including the schedules thereto, shall be in form and substance reasonably acceptable to the Purchaser.

SECTION 3.7 Performance; No Default. At the time of the Closing (and after giving effect to the Transaction),

(a) the representations and warranties of the Company contained in this Agreement and those made in writing by or on behalf of the Company in connection with any other Purchase Document delivered on the Closing Date shall be true and correct;

(b) the Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing; and

(c) no Default shall have occurred and be continuing.

SECTION 3.8 Absence of Litigation, etc. Except as disclosed by the Company pursuant to Section 5.8,

(a) no litigation, arbitration or governmental investigation or proceeding shall be pending or, to the Company's Knowledge, threatened against the Company or any Subsidiary which (x) affects any of their respective financial condition, business, assets, operations or properties and which would, in the opinion of the Purchaser, reasonably be expected to have a Materially Adverse Effect or (y) relates to the Transaction; and

(b) no development shall have occurred in any such litigation, arbitration or governmental investigation or proceeding so disclosed, which would, in the opinion of the Purchaser, reasonably be expected to have a Materially Adverse Effect.

SECTION 3.9 Certificate as to Compliance, etc. The Purchaser shall have received from the Company a certificate, dated the Closing Date, of its chief executive or financial Authorized Officer as to satisfaction of the conditions set forth in Sections 3.7 and 3.8 in the form of Exhibit G hereto.

SECTION 3.10 Certificate as to Solvency, etc. The Purchaser shall have received a certificate, dated the Closing Date, of the chief financial Authorized Officer of the Company, in the form of Exhibit H hereto.

SECTION 3.11 Opinion of Counsel. The Purchaser shall have received opinions, dated the Closing Date, from Squire, Sanders & Dempsey L.L.P., counsel to the Company and the Subsidiary Guarantors, substantially in the form of Exhibit I hereto.

SECTION 3.12 Fees. The Company shall have made payment in full of:

(a) all fees and other amounts due on the Closing Date to the Purchaser by the Company in connection with the Transaction; and

(b) all fees and expenses of Mayer, Brown & Platt which shall have been invoiced (including reasonable amounts invoiced on account) to the Company pursuant to Section 8.3.

SECTION 3.13 Wire Instructions. The Purchaser shall have received, not less than two Business Days prior to the Closing Date, wire instructions prepared by the Company as to all wire transfers or other payments to be effected on the Closing Date in connection with the Transactions to be consummated on the Closing Date pursuant to this Agreement or the other Transaction Documents, which wire instructions shall identify the payor and payee of each such wire transfer or payment, shall describe the manner of transfer or payment and shall otherwise be satisfactory in form and substance to the Purchasers.

SECTION 3.14 Due Diligence. The Purchaser shall have completed, to its reasonable satisfaction, an investigation and analysis of the legal affairs and Contractual Undertakings of the Company and its Subsidiaries.

SECTION 3.15 Legal Investment. On the Closing Date, the Purchaser's purchase of the Subject Securities shall not be prohibited by any Applicable Law and shall not subject it to any penalty or, in the Purchaser's reasonable judgment, other onerous condition under or pursuant to any Applicable Law.

SECTION 3.16 Satisfactory Legal Form. All documents executed or submitted pursuant hereto by or on behalf of the Company shall be satisfactory in form and substance to the Purchaser and its counsel; the Purchaser and its counsel shall have received all information, and such counterpart originals or such certified or other copies of all Instruments, as the Purchaser or its counsel may reasonably request; and all legal matters incident to the transactions contemplated by this Agreement shall be satisfactory to counsel to the Purchaser.

SECTION 3.17 Approvals, etc. The Company shall have received (i) all Approvals, and (ii) any consent of third-parties required under any Contractual Undertaking of the Company or any Subsidiary have been obtained or given, in each case in connection with the Transaction.

ARTICLE IV

PAYMENTS, REGISTRATION, ETC.

SECTION 4.1 Place of Payment. Payments of principal and interest becoming due and payable on the Series No. 1 Notes and any dividends or other payments on or in respect of any other Subject Securities shall be made to the Purchaser's account identified on the signature page hereto at the office of The Chase Manhattan Bank, 5 Metrotech Center, Brooklyn, New York.

SECTION 4.2 Home Office Payment. So long as the Purchaser or its nominee shall be the holder of any Subject Security, and notwithstanding anything contained in Section 4.1 or in any Subject Security to the contrary, the Company will pay all sums becoming due for principal of and interest on such Series No. 1 Note so held and all dividends or other payments on or in respect of any other Subject Security so held, not later than 12:00 o'clock noon, New York City time, on the date such payment is due, in immediately available funds,

(a) in accordance with the payment instructions set forth below the Purchaser's signature hereto with instructions to the payee identified in such instructions to telephone advice of credit in accordance with such instructions, or

(b) by such other method or at such other address or bank account as the Purchaser may designate in writing,

without the presentation or surrender of such Subject Security or the making of any notation thereon, except that any Series No. 1 Note paid or prepaid (or any other Subject Security redeemed) in full shall be surrendered to the Company at its principal office for cancellation. Prior to any sale or other disposition of any Series No. 1 Note held by the Purchaser, the Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Series No. 1 Note to the Company in exchange for a new Series No. 1 Note or Series No. 1 Notes, as the case may be, pursuant to Section 4.8. The Company will afford the benefits of this Section to any Institutional Holder which is the direct or indirect transferee of any Subject Security purchased by the Purchaser under this Agreement and which has made the same agreement relating to such Subject Security as the Purchaser has made in this Section.

SECTION 4.3 Optional Payments. The Company may, at its option, prepay at any time all or any part (in a minimum amount of $100,000 and integral multiples of $1,000 thereafter) of the outstanding principal amount of, or of interest due or to become due on the next Payment Date under, the Series No. 1 Notes. Prepayments of principal shall be in the amount of the applicable Optional Redemption Price and shall be accompanied by payment in full of all interest accrued on such principal amount and not yet paid. Each prepayment shall be subject, however, to the Company having given each Noteholder written notice of such prepayment not more than 30 days and not less than five days prior to the date fixed for such prepayment, in each case specifying (w) such date, (x) the aggregate principal amount, if any, of (and the amount of unpaid interest accrued on such principal amount), or the amount of unpaid interest

on, the Series No. 1 Notes to be prepaid on such date, (y) the principal amount, if any, of (and the amount of unpaid interest accrued on such principal amount), or the amount of unpaid interest on, each Series No. 1 Note held by such Noteholder to be prepaid on such date and (z) the Optional Redemption Price applicable to such prepayment.

SECTION 4.4 Payment of Principal and Interest.

(a) Payment of Maturity. The Company will duly and punctually pay the principal of and interest on the Series No. 1 Notes, and will timely pay and perform all of its other Obligations, in accordance with the terms of such Series No. 1 Notes, this Agreement and the other Purchase Documents, and, without limitation of the foregoing, the Company will, on the maturity of all Series No. 1 Notes (whether on January 15, 2007 or by declaration (pursuant to Section 7.3) or otherwise), make payment in full to the holders of the Series No. 1 Notes of the unpaid principal balance thereof, to the extent not sooner paid or prepaid hereunder, together with all unpaid interest and fees accrued thereon and all expenses, indemnities and other amounts then due and payable under the terms of the Series No. 1 Notes, this Agreement or the other Purchase Documents.

(b) Interest. The Series No. 1 Notes will bear interest, prior to the occurrence of any Default pursuant to Section 7.1.1 relating to the non-payment of principal of or interest on the Series No. 1 Notes, at a rate of 12.0% per annum. Interest so accrued will be payable in arrears on each Payment Date, commencing with July 15, 2000 and at maturity; provided, that on any Payment Date on or prior to January 15, 2002, the Company may (in lieu of making any required cash payment of interest on any outstanding Series No. 1 Notes) issue on such date, and each Person then entitled to payment of interest shall accept, a Series No. 1 Note (a "PIK Note") in a principal amount equal to the interest owed to such Person on such Payment Date. All PIK Notes shall have a maturity date of July 1, 2005. At any time when the Company shall have defaulted in the payment when due (whether at maturity, or at a date fixed for payment or prepayment or by declaration or otherwise) of principal of or interest on the Series No. 1 Notes (and for so long as such default shall continue), the Series No. 1 Notes will bear interest, payable semi-annually as aforesaid or at the option of a Noteholder on demand, at a rate equal to the sum of the foregoing rate plus an additional 2% per annum on the entire unpaid balance of such principal amount, on overdue premium, if any, and (to the extent permitted by applicable law) on overdue interest.

SECTION 4.5 Allocation. Each partial prepayment paid or to be prepaid of principal of the Series No. 1 Notes and each prepayment of interest paid or to be prepaid shall be allocated (in integral multiples of $1,000) among all of the Series No. 1 Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof. In the case of each voluntary prepayment of principal of or interest on the Series No. 1 Notes, the principal amount to be prepaid, if any, (together with interest on such principal amount accrued to such date), or the amount of interest to be prepaid, as the case may be, shall mature and become due and payable on the date fixed for such prepayment. From and after the date of any such prepayment of principal, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest, as aforesaid, interest on such principal amount shall cease to accrue. Any Series No. 1 Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Series No. 1 Note shall be issued in lieu of any prepaid principal amount of any Series No. 1 Note.

SECTION 4.6 Mandatory Offer of Redemption of Series No. 1 Notes. Upon the earliest to occur of:

(a) any Change of Control,

(b) the Company entering into any written or other arrangement which will give rise to a Change of Control, or

(c) the Company having notice that any other Person has entered into a written or other arrangement which will give rise to a Change of Control,

the Company will promptly give written notice of such transaction or event to each Noteholder, which notice shall describe such transaction or event in reasonable detail. Within five (5) Business Days following the occurrence of any Change of Control, the Company will offer to purchase from each Noteholder all of the outstanding Series No. 1 Notes held by it at a purchase price, payable in immediately available funds, equal to the Optional Redemption Price of the unpaid principal amount thereof together with all unpaid interest accrued thereon to the date of such purchase.

SECTION 4.7 Assignments by Noteholders. Each Noteholder may assign to one or more financial institutions that are accredited investors all or a portion of its rights and obligations under Series No. 1 Notes, this Agreement and all other agreements executed in connection therewith (pursuant to the terms and conditions of such agreements); provided, however, that in the case of each such assignment of a Series No. 1 Note, the principal amount assigned shall be equal to or greater than $1,000,000 or, if less, such Noteholder's entire amount of its Series No. 1 Note(s); provided further, however, that such Noteholder shall give the Company no less than five Business Days written notice of such prospective assignment, upon the receipt of which the Company shall have three Business Days to give such Noteholder written notice (the "Notice of Redemption") stating that the Company shall redeem or prepay the portion of such Series No. 1 Note(s) or portion to be assigned in accordance with Section 4.3 within ten Business Days after such Noteholder's receipt of the Notice of Redemption. The parties to each such assignment shall execute and deliver to the Company, for its recording in the register kept by it pursuant to Section 4.7.4, an assignment and acceptance agreement (the "Assignment and Acceptance") substantially in the form of Exhibit F hereto, together with any Series No. 1 Note or Series No. 1 Notes subject to such assignment.

SECTION 4.7.1 Consent to Certain Assignments. The consent of the Company is not required for a Noteholder to assign all or a portion of the rights and obligations under this Agreement, provided that (i) all conditions set forth in Section 4.7 have been satisfied, and (ii) only Noteholders and Institutional Holders may have any rights under this Agreement.

SECTION 4.7.2 Procedures. Upon any assignment of Series No. 1 Notes, and the execution and delivery by any Noteholder of an Assignment and Acceptance to the Company,

(a) the assignee thereunder shall, automatically and without further action, become a party hereto and, to the extent that rights and obligations hereunder or under any other Purchase Document have been assigned to it pursuant to such Assignment and Acceptance, shall have all rights, obligations and benefits of a Noteholder; and

(b) the assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released (other than the final paragraph of Section 6.1.1 which assignor shall continue to be bound thereto) from its obligations under this Agreement and under each other Purchase Document (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Noteholder's rights and obligations under this Agreement, such assigning Noteholder shall cease to be a party hereto; provided that the obligations of the Company to such assigning Noteholder under Sections 4.10, 8.3 and 8.4 with respect to events occurring or obligations arising before such assignment shall survive such assignment).

SECTION 4.7.3 Terms and Conditions. By executing and delivering an Assignment and Acceptance, each of the assignor and assignee thereunder confirm to and agree with each other and the other parties hereto as follows:

(a) other than as provided in such Assignment and Acceptance, such assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Purchase Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, the assigned Series No. 1 Note, any Purchase Document or any other Instrument furnished pursuant hereto;

(b) such assigning Purchaser makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Company or any Subsidiary or the performance or observance by any party hereto or thereto of any of its obligations under this Agreement or any other Purchase Document or any other Instrument furnished pursuant hereto;

(c) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Sections 5.4 and 6.1.1 (to the extent theretofore delivered) and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; and

(d) such assignee will, independently and without reliance upon any Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

SECTION 4.7.4 Registration, Transfer, etc. The Company will keep at its principal office a register in which the Company will provide for the registration of the Series No. 1 Notes and their transfer. The Company may treat the Person in whose name any Series No. 1 Note is registered on such register as the owner thereof for the purpose of receiving payment of the principal of and interest on such Series No. 1 Note and for all other purposes, whether or not such Series No. 1 Note shall be overdue, and the Company shall not be affected by any notice to the contrary from any Person other than the applicable Noteholder. All references in this Agreement to a "holder" of any Series No. 1 Note shall mean the Person in whose name such Series No. 1 Note is at the time registered on such register.

SECTION 4.8 Transfer and Exchange. Upon surrender of any Series No. 1 Note for registration of transfer or for exchange to the Company at its principal office, the Company at its expense will execute and deliver in exchange therefor a new Series No. 1 Note or Series No. 1 Notes, as the case

may be, of the same class in denominations of at least $100,000 (except a Series No. 1 Note may be issued in a lesser principal amount if the unpaid principal amount of the surrendered Series No. 1 Note is not evenly divisible by, or is less than, $100,000), as requested by the holder or transferee, which aggregate the unpaid principal amount of such Series No. 1 Note, registered as such holder or transferee may request, dated so that there will be no loss of interest on such surrendered Series No. 1 Note and otherwise of like tenor.

SECTION 4.9 Replacement. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any Series No. 1 Note and, in the case of any such loss, theft or destruction of any Series No. 1 Note, upon delivery of an indemnity bond in such reasonable amount as the Company may determine (or, in the case of any Series No. 1 Note or Series No. 1 Notes held by the Purchaser or another Institutional Holder or the Purchaser's nominee, of an unsecured indemnity agreement from the Purchaser or such other holder reasonably satisfactory to the Company), or, in the case of any such mutilation, upon the surrender of such Series No. 1 Note for cancellation to the Company at its principal office, the Company at its expense will execute and deliver, in lieu thereof, a new Series No. 1 Note of the same class and of like tenor, dated so that there will be no loss of interest on (and registered in the name of the holder of) such lost, stolen, destroyed or mutilated Series No. 1 Note. Any Series No. 1 Note in lieu of which any such new Series No. 1 Note has been so executed and delivered by the Company shall be deemed to be not outstanding for any purpose of this Agreement.

SECTION 4.10 Taxes. Except as otherwise provided in this Section, all payments by the Company of principal of, and interest on, the Series No. 1 Notes, and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, excluding, however, franchise taxes and taxes imposed on or measured by the Purchaser's or any other Noteholder's net income or receipts (such non-excluded items being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Company hereunder is required in respect of any Taxes pursuant to any Applicable Law, then, the Company will:

(a) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(b) promptly forward to the Purchaser and each other Noteholder an official receipt or other documentation satisfactory to the Purchaser and each other Noteholder evidencing such payment to such authority; and

(c) except as otherwise provided in this Section, pay to the Purchaser and each other Noteholder such additional amount or amounts as is necessary to ensure that the net amount actually received by each Noteholder will equal the full amount such Noteholder would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Purchaser or any Noteholder with respect to any payment received by the Purchaser or such Noteholder hereunder, the Purchaser or such Noteholder may pay such Taxes, and, except as otherwise provided in this Section, upon receipt of written evidence of such payment, the Company will promptly pay such additional amount (including any penalties, interest or expenses) as is necessary in order that the net amount received by the Purchaser or such Noteholder

after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount the Purchaser or such Noteholder would have received had no such Taxes been asserted.

If the Company fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Purchaser and the other Noteholders the required receipts or other required documentary evidence, the Company shall indemnify the Purchaser and the other Noteholders for any incremental Taxes, interest or penalties that may become payable by the Purchaser or any other Noteholder as a result of any such failure. For purposes of this Section, a distribution hereunder by the Purchaser or any other Noteholder to or for the account of any Noteholder shall be deemed a payment by the Company.

The Purchaser shall provide to the Company on or prior to the due date of the first payment under the Series No. 1 Notes, two original signed copies of Internal Revenue Service Form 4224 or Form 1001 or any successor form certifying to the Purchaser's entitlement to a complete exemption from United States withholding tax with respect to payments of interest to be made under this Agreement and under any Series No. 1 Note. Any Noteholder which is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes (a "Non-U.S. Noteholder") that becomes a Noteholder under this Agreement after the Closing shall, upon the date of such Noteholder becoming a Noteholder hereunder, provide to the Company two original signed copies of Internal Revenue Service Form 4224 or Form 1001 or any successor form certifying as to such Noteholder's entitlement to a complete exemption from United States withholding tax with respect to payments of interest to be made under this Agreement and under any Series No. 1 Note; provided, however, that if such Non-U.S. Noteholder is an Affiliate of the Purchaser and is organized under the laws of the same jurisdiction as the Purchaser, such Noteholder will only be required to deliver such forms certifying as to such Noteholder's entitlement to the same exemption from such withholding tax to which the Purchaser would be entitled with respect to such payments as of such date. To the extent legally entitled to do so, on or before the date any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Company, and otherwise from time to time upon the reasonable written request of the Company after the Closing, each Noteholder (including the Purchaser) that is a Non-U.S. Noteholder will provide to the Company two original signed copies of Internal Revenue Service Form 4224 or Form 1001 (or any successor forms) certifying to such Noteholder's entitlement to an exemption from United States withholding tax with respect to payments of interest to be made under this Agreement and under any Series No. 1 Note.

Notwithstanding anything to the contrary contained in this Section, the Company shall be entitled, to the extent it is required to do so by law, to deduct or withhold income or similar taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Noteholder that is a Non-U.S. Noteholder and that has not provided to the Company the forms required to be provided to the Company pursuant to the preceding paragraph, and the Company shall have no obligation to pay any additional amount to a Non-U.S. Noteholder with respect to such withheld amounts or with respect to Taxes incurred by such Non-U.S. Noteholder to the extent such withholding would not have been required or such Taxes would not have been incurred if such Non-U.S. Noteholder would have provided such forms to the Company in the manner required by the preceding paragraph.

ARTICLE V

WARRANTIES, ETC.

To induce the Purchaser to enter into this Agreement and to purchase the Subject Securities hereunder, the Company represents and warrants unto the Purchaser as follows (and, for all purposes of this Agreement, all of such representations and warranties shall be understood to be made by the Company on (and only on) the date of execution and delivery of this Agreement by the Company and the Closing Date (except to the extent specifically made as of another date); provided, however, that (x) the representations in Sections 5.4 and 5.20 relative to any financial, other information or projections delivered from time to time pursuant to this Agreement or any other Purchase Document shall also be understood to be made with respect thereto on the date of delivery thereof and (y) the representations in Sections 5.1, 5.2 and 5.3 relative to each Subsidiary Guarantor shall also be understood to be made on the date when such Subsidiary Guarantor executes and delivers a Subsidiary Guaranty pursuant to clause (a) of Section 6.1.6.):

SECTION 5.1 Organization, Power, Authority, etc. Each Obligor is a corporation duly incorporated and in good standing under the laws of the jurisdiction of its incorporation and has full power and authority and holds all requisite Approvals to own and hold its property and to conduct its business substantially as currently conducted by it. The Company has full power and authority to enter into and perform its obligations under this Agreement, the Series No. 1 Notes, the other Subject Securities and each other Purchase Document to which it is a party and to issue the Subject Securities (and any Common Shares issuable upon exercise of any thereof), and each Subsidiary Guarantor has full power and authority to enter into and perform its obligations under the Subsidiary Guaranty and each other Purchase Document to which it is a party.

SECTION 5.2 Due Authorization. The execution and delivery by the Company of this Agreement, the Series No. 1 Notes and other Subject Securities and each other Purchase Document to which it is a party, the performance by the Company of its obligations hereunder and thereunder, and the issuance of the Subject Securities (and the issuance of Common Shares issuable upon exercise of any thereof) by the Company, and the execution and delivery by each Subsidiary Guarantor of the Subsidiary Guaranty and each other Purchase Document to which it is a party and the performance by each Subsidiary Guarantor of its obligations thereunder, have been duly authorized by all necessary corporate action, do not require any Approval, do not and will not conflict with, result in any violation of, or constitute any default under, any provision of any Organizational Document, any Applicable Law or Material Contract and will not result in or require the creation or imposition of any Lien on any of its properties pursuant to the provisions of any Material Contract (excluding, however, pursuant to any Purchase Document).

SECTION 5.3 Validity, etc. This Agreement constitutes, and the Series No. 1 Notes and other Subject Securities and each other Purchase Document to which the Company is a party will on the due execution and delivery thereof constitute, the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject, however, as to enforcement only, to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and general equity principles (regardless of whether enforcement is sought in a proceeding at law or in equity). The Subsidiary Guaranty and each other Purchase Document to which each Subsidiary Guarantor is a party will on the due execution and delivery

thereof constitute the legal, valid and binding obligation of such Subsidiary Guarantor enforceable in accordance with their respective terms, subject, however, as to enforcement only, as aforesaid.

SECTION 5.4 Financial Information. All balance sheets, financial statements and all other financial information which have been furnished by or on behalf of the Company to the Purchaser for the purposes of or in connection with this Agreement or any transaction contemplated hereby, including

(a) the audited consolidated balance sheet at December 31, 1998, and the related consolidated statement of operations, of shareholders' equity and of cash flow for the fiscal year then ended, of the Company and its Subsidiaries (the "1998 Audited Financial Statements"), and

(b) the consolidated balance sheet at September 30, 1999, and the related consolidated statements of operations, of shareholders' equity and of cash flow for the three fiscal quarters then ended, of the Company and its Subsidiaries (the "1999 Interim Financial Statements"),

have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as disclosed therein) and present fairly the consolidated financial condition of the corporations covered thereby as at the dates thereof and the results of their operations for the periods then ended. All financial information as to the Company and Subsidiaries which shall hereafter from time to time be furnished by or on behalf of the Company to the Purchaser and other Noteholders for the purposes of or in connection with this Agreement or any transaction contemplated hereby will be prepared in accordance with GAAP consistently applied throughout the periods involved (except as disclosed therein) and will present fairly the consolidated financial condition of the corporations covered thereby as at the dates thereof and the results of their operations for the periods then ended except (i) as may be otherwise indicated in such financial statements or the notes thereto or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or summary statements or may be condensed (subject, however, in the case of unaudited interim statements, to normal year-end audit adjustments).

SECTION 5.5 Absence of Material Adverse Change. There have been no occurrences, events or changed circumstances since December 31, 1998, other than as disclosed in the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 1999 (excluding, however, the Transaction) which, individually, as part of a series or in the aggregate, have had a Materially Adverse Effect.

SECTION 5.6 Continuing Indebtedness. There is no long-term Indebtedness of the Company and Subsidiaries on a consolidated basis expected to be outstanding immediately after giving effect to the Transaction, except as disclosed in Item 5.6 ("Ongoing Indebtedness") of the Disclosure Schedule.

SECTION 5.7 Contingencies. Neither the Company nor any Subsidiary has any contingent liability for taxes, long-term leases or unusual forward or long-term commitments or material unrealized or unanticipated losses from unfavorable commitments which could reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect and which are not reflected in the financial statements described in clause (a) or (b) of Section 5.4 or in the notes thereto.

SECTION 5.8 Litigation, etc. There is no pending or, to the Company's Knowledge, threatened litigation, arbitration or governmental investigation or proceeding against, or labor controversy affecting

the Company or any Subsidiary or to which any of the properties, assets or revenues of any thereof is subject (x) which could reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect, except as disclosed in Item 5.8 ("Litigation, etc.") of the Disclosure Schedule or (y) which relates to the Transaction.

SECTION 5.9 Capitalization.

(a) On the Closing Date, the authorized Capital Stock of the Company will be as set forth in Item 3.4 ("Capital Stock") of the Disclosure Schedule and the number of Common Shares reserved for issuance upon the exercise of

(i) any and all stock option plans or employee ownership plans in respect of the Capital Stock of the Company in existence on the Closing Date,

(ii) any warrants, other than the warrants issued in connection with this Transaction; and

(iii) the conversion or exchange of all securities convertible into or exchangeable for Common Shares,

respectively, is as set forth therein.

(b) The Common Shares to be issued to the Purchaser pursuant to the Warrant will have been duly authorized for issuance and, when sold and delivered against payment therefor as provided herein and in the Warrant Agreement, will be validly issued, fully paid and non-assessable and will be free and clear of all preemptive rights and Liens except as otherwise provided herein and will be entitled to the respective voting powers, designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are set forth with respect thereto in the Certificate of Incorporation.

(c) The Company does not have outstanding any Capital Stock or securities convertible into or exchangeable for any shares of its Capital Stock, nor does it have outstanding any rights or options to subscribe for or to purchase any Capital Stock or securities convertible into or exchangeable for any of its shares of Capital Stock, except as described in this Section. Except as disclosed in Item 5.9 ("Repurchase, etc. Agreements") of the Disclosure Schedule, the Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Capital Stock.

(d) The aggregate amount of Common Shares issuable pursuant to any warrants, options and other rights held by any management employee of the Company or any Affiliate thereof for which the exercise price thereof is equal to or greater than the market price of such Common Shares on the Closing Date does not exceed 5% of the aggregate outstanding Common Shares of the Company at the time of calculation.

(e) Except for the Registration Agreement, the Warrant Agreement, and the First Registration Agreement, and the registration of existing stock options and stock options granted

under the 1999 Stock Option Plan, none of the Company or any Subsidiary has entered into an agreement to register any of its securities under the Securities Act.

SECTION 5.10 Margin Regulations. The Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock, and less than 25% of the assets of the Company, individually and on a consolidated basis with all Subsidiaries, consists of margin stock. Terms for which meanings are provided in F.R.S. Board Regulation U or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

SECTION 5.11 Government Regulation. Neither the Company nor any Subsidiary is (or shall upon the consummation of the Transaction become) (x) an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (y) subject to regulation under the Federal Power Act, the Interstate Commerce Act, the Commodity Exchange Act or any Applicable Law limiting its ability to incur or assume Indebtedness for borrowed money.

SECTION 5.12 Title to and Condition of Properties; Material Contracts. Each of the Company and each Subsidiary (x) has good and marketable title to all of the real property, and valid title to all of the personal properties and other assets (tangible, intangible or mixed), which it purports to own (except where failure would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect), free and clear of all Liens (excluding, however, Liens permitted by Section 6.2.3) and (y) enjoys peaceful and undisturbed possession under all leases to which it is a party as lessee (excluding, however, leases the absence of which would not reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect). All Material Contracts to which the Company is a party are valid and binding and in full force and effect, and no default has occurred or is continuing thereunder except as disclosed on Item 5.12 ("Defaults") of the Disclosure Schedule. No consent need be obtained from any Person (which is not required by Article III to be obtained on or prior to the Closing Date) in respect of any such Material Contract in connection with the Transaction which, if not obtained, would reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect.

SECTION 5.13 Patents, Trademarks, etc. The Company and Subsidiaries own, or are licensed under, and have the rights to use, all material patents, trademarks, trade names, copyrights, technology, recipes, know-how and processes (collectively, "Intellectual Property") necessary for the conduct of their businesses as currently conducted, and the consummation of the Transaction does not alter or impair any such rights. Except as disclosed in Item 5.13 ("Patents, Trademarks, etc.") of the Disclosure Schedule, there is no (x) claim which has been asserted by any Person to the use of any Intellectual Property or challenging or questioning the validity or effectiveness of any license or agreement related thereto or (y) to the Company's Knowledge, valid basis for any such claim or any claim that the use of such Intellectual Property by the Company and Subsidiaries infringes or will infringe on the rights of any Person.

SECTION 5.14 Taxes. The Company and each of its Subsidiaries has filed all material tax returns and reports required by Applicable Law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing, excluding, however, any such taxes or charges which

are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 5.15 Pension and Welfare Plans. During the 12 consecutive-month period prior to the Closing Date, no steps have been taken to terminate any Plan, and no contribution failure has occurred with respect to any Plan sufficient to give rise to a Lien under section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Plan which might result in the incurrence by the Company or any member of the Controlled Group of any material liability, fine or penalty. Except as disclosed in Item 5.15 ("Employee Benefit Plans") of the Disclosure Schedule, neither the Company nor any of its Subsidiaries nor any member of the Controlled Group has any contingent liability with respect to any post-retirement benefit under a Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA.

SECTION 5.16 Environmental Matters. Except as disclosed in Item 5.16 ("Environmental Matters") of the Disclosure Schedule,

(a) to the Company's Knowledge all facilities and property (including underlying groundwater) owned or leased by the Company or any of its Subsidiaries are owned or leased by it in material compliance with all Environmental Laws,

(b) there have been no unresolved past, and there are no pending or, to the Company's Knowledge, threatened claims, complaints, notices or requests for information received by the Company or any of its Subsidiaries with respect to any alleged violation of any Environmental Law, or complaints, notices or inquiries to the Company or any of its Subsidiaries regarding potential liability under any Environmental Law (collectively, "Environmental Claims"),

(c) to the Company's Knowledge there have been no releases of Hazardous Materials at, on or under any property now or previously owned or leased by the Company or any of its Subsidiaries,

(d) to the Company's Knowledge no property now or previously owned or leased by the Company or any of its Subsidiaries is listed or proposed for listing (with respect to owned property only) on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list of sites requiring investigation or clean-up,

(e) none of the Company or any of its Subsidiaries has received notice that the Company or any of its Subsidiaries is potentially responsible for clean-up or other corrective action under any Environmental Law,

(f) to the Company's Knowledge there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or previously owned or leased by the Company or any of its Subsidiaries,

(g) neither the Company nor any of its Subsidiaries has directly transported or directly arranged for the transportation of any Hazardous Material to any location which is listed or, to the Company's Knowledge, proposed for listing on the National Priorities List pursuant to

CERCLA, on the CERCLIS or on any similar federal, state or provincial list or which is the subject of federal, state, provincial or local enforcement actions or other investigations which may lead to material claims against the Company or any Subsidiary for any remedial work, damage to natural resources or personal injury, including claims under CERCLA,

(h) to the Company's Knowledge, there are no polychlorinated biphenyls or friable asbestos present at any property now or previously owned or leased by the Company or any of its Subsidiaries, and

(i) to the Company's Knowledge, no conditions exist at, on or under any property now or previously owned or leased by the Company or any of its Subsidiaries which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Law,

except, in any and all such cases, as would not reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect.

SECTION 5.17 Year 2000 Problem. The Company has reviewed its operations and those of its Subsidiaries with a view to assessing whether it or its Subsidiaries' respective businesses will, in the receipt, transmission, processing, manipulation, storage, retrieval, retransmission or other utilization of data, be vulnerable to a Year 2000 Problem. Based on such review, the Company has no reason to believe that a Materially Adverse Effect will result from a Year 2000 Problem.

SECTION 5.18 Solvency. The Transaction (including the issuance and sale of the Series No. 1 Notes hereunder, the incurrence by the Company of the Indebtedness represented by the Series No. 1 Notes and the application of the proceeds of the issuance and sale of the Series No. 1 Notes), will not involve or result in any fraudulent transfer or fraudulent conveyance under the provisions of any applicable federal or state law respecting fraudulent transfers or fraudulent conveyances. After giving effect to the Transaction, the Company and each Subsidiary will be solvent.

SECTION 5.19 Subsidiaries, etc. As of the Closing Date,

(a) the Company will have no Subsidiaries and no other Investments in any joint venture, partnership or other Person, except as disclosed in Item 5.19 ("Subsidiaries, etc.") of the Disclosure Schedule; and

(b) the Company will be the record and beneficial owner, free of Liens, of 100% of the issued and outstanding Capital Stock of each Subsidiary.

SECTION 5.20 Accuracy of Information. All factual information (and, for the sake of clarity, not including any projections) heretofore or contemporaneously furnished by or on behalf of the Company in writing to the Purchaser for purposes of or in connection with the Transaction, including true and complete copies thereof furnished to the Purchaser prior to the execution and delivery of this Agreement, is collectively, and all other such factual written information hereafter furnished by or on behalf of the Company to the Purchaser or any Noteholder will be, in light of the circumstances under which it was made, individually, true and accurate in every material respect taken as a whole on the date as of which such written information is dated or certified, and such information is not, or shall not be, as the case may be,

incomplete on the date as of such information is dated or certified by omitting to state any material fact necessary to make such information, in light of the circumstances under which it was made, not misleading. There is, to the Company's Knowledge, no fact that the Company has not disclosed to the Purchaser in writing that would, individually or in the aggregate, reasonably be expected to have a Materially Adverse Effect. All projections heretofore, contemporaneously and hereafter furnished by or on behalf of the Company in writing to the Purchaser for purposes of this Agreement or any transaction contemplated hereby are and will be based on good faith estimates and assumptions which the Company believes are fair and reasonable in light of the historical financial performance of the Company and current and reasonably foreseeable business conditions, and, to the Company's Knowledge, there are or will be no facts or circumstances existing at the time such projections are furnished which would, individually or in the aggregate, reasonably be expected to cause a material change in such projections, it being recognized, however, by the Purchaser that projections as to future events are not to be viewed as fact and that actual results during the period or periods covered by any such projections may differ from the projected results and that the differences may be material.

SECTION 5.21 Offering of Subject Securities. Neither the Company, any Subsidiary nor any Person employed to act on behalf of any thereof in connection with the offer and sale of the Subject Securities has directly or indirectly offered the Series No. 1 Notes, the Common Shares or any part thereof or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, anyone other than the Persons identified in Item 3.4 ("Capital Stock") of the Disclosure Schedule. Neither the Company, nor anyone acting on behalf of it has taken or will take any action which would subject the issuance or sale of the Series No. 1 Notes or Common Shares to the provisions of Section 5 of the Securities Act or to the registration or qualification requirements of any securities or blue sky law of any applicable jurisdiction.

ARTICLE VI

COVENANTS

SECTION 6.1 Certain Affirmative Covenants. The Company agrees with:

(a) the Purchaser and each other Noteholder that, until all Obligations have been paid and performed in full, the Company will perform all of the covenants contained in Section 6.1;

(b) the Purchaser and each other Institutional Holder that, for so long as either shall hold any Subject Security (other than a Series No. 1 Note), the Company will perform the covenants contained in clause (b) of Section 6.1.1 for the benefit of the Purchaser or such Institutional Holder as if it were a Noteholder; and

(c) the Purchaser that, if at any time and for so long as (i) the Purchaser shall hold any Subject Security (other than a Series No. 1 Note) and (ii) the Company is not subject to the reporting requirements of Section 13 (d) or (g) of the Exchange Act, the Company will perform the covenants contained in clauses (a) and (b) of Section 6.1.1 for the benefit of the Purchaser as if it were a Noteholder.

SECTION 6.1.1 Financial Information, etc. The Company will furnish, or will cause to be furnished, to the Purchaser and each other Noteholder copies of the following financial statements, reports and information:

(a) promptly when available and in any event within 120 days after the close of each Fiscal Year, (i) a consolidated balance sheet as of the end of such Fiscal Year, and consolidated statements of operations, of shareholders' equity and of cash flow for such Fiscal Year, of the Company and Subsidiaries, prepared on a comparative basis with the preceding Fiscal Year and audited by Ernst & Young, L.L.P. (or other independent public accountants of recognized national standing selected by the Company) and (ii) credit collection analyses on a "static pool" basis together with all servicer reports for the last Fiscal Quarter of such Fiscal Year prepared in connection with any Securitization Transaction or warehouse financing;

(b) promptly when available and in any event within 60 days after the close of each of the first three Fiscal Quarters of each Fiscal Year, and certified by the chief accounting, executive or financial officer of the Company, (i) consolidated balance sheets at the close of such Fiscal Quarter, and the related consolidated statements of operations, of shareholders' equity and of cash flow for such Fiscal Quarter and for the period commencing at the close of the previous Fiscal Year and ending with the close of such Fiscal Quarter, of the Company and Subsidiaries (with comparative information at the close of and for the corresponding Fiscal Quarter of the prior Fiscal Year and for the corresponding portion of such prior Fiscal Year), (ii) management discussion and analysis of such balance sheets and financial statements and (iii) credit collection analyses on a "static pool" basis together with all servicer reports for such Fiscal Quarter prepared in connection with any Securitization Transaction or warehouse financing;

(c) promptly when available and in any event within 30 days after the close of each calendar month, and certified by the chief accounting, executive or financial officer of the Company, (i) consolidated balance sheets at the close of such calendar month, and the related consolidated statements of operations, of shareholders' equity and of cash flow for such calendar month and for the period commencing at the close of the previous Fiscal Year and ending with the close of such calendar month, of the Company and Subsidiaries (with comparative information at the close of and for the corresponding calendar month of the prior Fiscal Year and for the corresponding portion of such prior Fiscal Year) and (ii) a copy of all Form 8-Ks filed by the Company during such month, provided, that if at any time and for so long as the Company is not subject to the reporting requirements of Section 13 (d) or (g) of the Exchange Act, then the Company, in lieu of furnishing such Form 8-Ks, will furnish such information that would otherwise be required to be reported in such Form 8-Ks;

(d) together with each set of financial statements delivered from time to time as at the close of any Fiscal Year or Fiscal Quarter, a certificate of the chief accounting, executive or financial officer of the Company stating that to the best of such Officer's Knowledge no Default had occurred or was continuing at the close of such Fiscal Year or Fiscal Quarter, as the case may be, or, if a Default had occurred and was continuing, a description thereof and a statement as to whether it is continuing and as to what actions are being taken to cure it;

(e) with ten (10) Business Days after approval thereof by the Company's Board of Directors, the Company's budget as in effect for such Fiscal Year substantially in the form approved by the Company's Board of Directors;

(f) promptly after being made generally available to the public by the Company, all press releases and statements delivered to its shareholders concerning developments that are material; and

(g) such other information with respect to the financial condition, business, property, assets, revenues and operations of the Company or any Subsidiary as the Purchaser or the Required Noteholders may from time to time reasonably request (including as to potentially material environmental conditions to monitor compliance with Section 6.1.8).

For purposes of any financial statements delivered pursuant to clauses (a) and (b), all Subsidiaries which are either direct Subsidiaries or Subsidiaries of the same Subsidiary and which are not Subsidiary Guarantors may be treated collectively on a consolidated basis.

The Purchaser and each other Noteholder and Institutional Holder acknowledge that certain information provided to such parties pursuant to this Agreement may consist of material nonpublic information regarding the Company, and each such party acknowledges and agrees that it is aware (and that any Person to whom any such information may be disclosed as permitted by this Agreement has been, or upon receiving such information will be, advised) of the restrictions imposed by federal and state securities laws on a Person possessing material nonpublic information regarding an issuer of securities. Notwithstanding any other provision in this Agreement, this paragraph shall survive and continue to be binding against Purchaser, each other Noteholder and Institutional Holder after any sale, conveyance, assignment or transfer by any such Person of any Subject Security or the Warrants.

SECTION 6.1.2 Notice of Default, etc. The Company will furnish, or will cause to be furnished, to the Purchaser and each other Noteholder prompt notice (with a description in reasonable detail) of:

(a) the occurrence, to the Company's Knowledge, of any Default;

(b) any steps by the Company or any other Person to terminate any Plan, or the failure to make a required contribution to any Plan if such failure is sufficient to give rise to a Lien under section 302(f) of ERISA, or of any action with respect to a Plan which could result in the requirement that the Company or any Subsidiary furnish a bond or other security with the PBGC or such Plan, or any event with respect to any Plan which could result in the incurrence by the Company or any Subsidiary of any material liability, fine or penalty, or any material increase in the Contingent Liability of the Company or any Subsidiary with respect to any post-retirement Plan benefit, notice thereof and copies of all documentation relating thereto; and

(c) material written claims, complaints, notices or inquiries relating to compliance with Environmental Laws with respect to the condition of any facilities and properties of the Company or any Subsidiary.

SECTION 6.1.3 Maintenance of Corporate Existence, etc. Except as allowed under Section 6.2.7, the Company will cause to be done at all times all things necessary to maintain and preserve the corporate existence of the Company and each Material Subsidiary.

SECTION 6.1.4 Performance of Purchase Documents. The Company will, and will cause each Subsidiary to, perform promptly and faithfully all of its obligations under each Purchase Document.

SECTION 6.1.5 Books and Records. The Company will, and will cause each Subsidiary to, keep books and records reflecting all of its business affairs and transactions in accordance with GAAP and permit the Noteholders as a single group or any representatives of all Noteholders (as appointed by the Required Noteholders), at reasonable times and intervals and on reasonable prior notice, to visit all of its offices, to discuss its financial matters with its officers and independent public accountant (and hereby authorizes such independent public accountant to discuss its financial matters with the Noteholders as a single group or their aforementioned representatives whether or not any representative of the Company is present) and to examine (and, at the reasonable expense of the Company, photocopy extracts (such extracts to be identified by the Required Noteholders or their authorized representatives with reasonable particularity) from) any of its books or other corporate records. For so long as an Event of Default exists and is continuing, the Company agrees to pay any reasonable fees and out-of-pocket expenses of a single independent public accounting firm representing all Noteholders (as appointed by the Required Noteholders) reasonably incurred in connection with the Noteholders' exercise of their rights pursuant to this Section.

SECTION 6.1.6 Subsidiary Guarantors. The Company will:

(a) concurrently with any Person (other than any Securitization Subsidiary) becoming a Material Subsidiary, cause such Material Subsidiary (x) to execute and deliver to the Purchaser a guaranty agreement (as amended, supplemented and otherwise modified from time to time, the "Subsidiary Guaranty") in substantially the form of Exhibit D hereto and (y) to deliver to the Purchaser appropriately completed certificates substantially in the form of Exhibits B and C hereto; and

(b) except as allowed under Section 6.2.7, continue to own and hold, free of Liens (other than Liens created by the Purchase Documents), all of the outstanding shares of Capital Stock of each Subsidiary.

SECTION 6.1.7 Payment of Taxes, etc. The Company will, and will cause each Subsidiary to, pay and discharge, as the same may become due and payable, all federal, state and local taxes, assessments, fees and other governmental charges or levies against it or on any of its property, as well as claims of any kind which, if unpaid, might become a material Lien upon any of its properties; provided, however, that the foregoing shall not require the Company or any Subsidiary to pay or discharge any such tax, assessment, fee, charge, levy or Lien so long as it shall be diligently and promptly contesting the validity thereof in good faith by appropriate proceedings and shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto.

SECTION 6.1.8 Environmental Conduct. The Company will, and will cause each Subsidiary to, (x) use and operate all of its facilities and properties in compliance with all Environmental Laws, (y) keep all necessary permits, approvals, certificates, licenses and other authorizations relating to

environmental matters in effect and remain in compliance therewith and (z) handle all Hazardous Substances in compliance with all applicable Environmental Laws; except, in each case, where the failure to comply with the terms of this Section 6.1.8 could not reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect.

SECTION 6.1.9 Use of Proceeds. The Company will lend the proceeds of the Series No. 1 Notes to Midland. Midland will use such proceeds (a) to purchase charged-off accounts and (b) for working capital and general corporate purposes.

SECTION 6.1.10 Insurance. The Company will, and will cause each of its Subsidiaries to, maintain or cause to be maintained with responsible insurance companies insurance with respect to its properties and business against such casualties and contingencies and of such types and in such amounts as is reasonable and customary in the case of similar businesses.

SECTION 6.1.11 Subsequent Note Issuance. The Company will, promptly upon the issuance of any Indebtedness allowed under Section 6.2.2(b), amend this Agreement (and each other Purchase Document to the extent required) to the extent necessary to ensure that no holder of any such Indebtedness enjoys any other terms and conditions in the aggregate that are more favorable than those of any Noteholder hereunder (including interest rates and covenants).

SECTION 6.2 Certain Negative Covenants. The Company agrees with

(a) the Purchaser and each other Noteholder that, until all Obligations have been paid and performed in full, the Company will perform all of the covenants contained in this Section 6.2; and

(b) the Purchaser and each other Institutional Holder that, for so long as either shall hold any Subject Security (other than a Series No. 1 Note), the Company will perform the covenants contained in Section 6.2.1, 6.2.7, and 6.2.11 for their benefit as if they were Noteholders.

SECTION 6.2.1 Business Activities. The Company will not, and will not permit any Subsidiary to, engage in any business activity, excluding, however, its consummation of the Transaction, its performance from time to time of its obligations under the Transaction Documents and its engaging in activities in which the Company or its Subsidiaries are engaged on the Closing Date (which the Purchaser acknowledges is the purchase, sale and servicing of charged-off accounts, including, without limitation, Securitization Transactions and Residual Transactions in connection therewith), and, in each case, activities or lines of business incidental and related thereto and (ii) Investments permitted pursuant to clause (f) of Section 6.2.6.

SECTION 6.2.2 Indebtedness. The Company will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness other than:

(a) Indebtedness in respect of the Series No. 1 Notes and other Obligations;

(b) future Indebtedness of the Company in an aggregate principal amount not to exceed $40,000,000 which Indebtedness is incurred on terms and conditions substantially similar to those of this Agreement; provided, that all proceeds of any such Indebtedness in excess of $25,000,000 shall be used to permanently reduce the Bank of America Indebtedness to the extent outstanding and, to the extent not outstanding, to permanently reduce the availability of borrowings under the Bank of America Credit Agreement;

(c) the Bank of America Indebtedness;

(d) other future non-recourse Indebtedness of the Company or any Securitization Subsidiary, the proceeds of which are used for the purpose of acquiring, financing or refinancing charged-off accounts, and that is incurred by the Company or such Securitization Subsidiary on terms and conditions customary to such Securitization Transactions; provided, however, that the aggregate original principal amount of such Indebtedness shall not, when incurred, exceed (i) in the case of charged-off accounts that have not been subject to a prior Securitization Transaction, 100% of the acquisition cost of the accounts being financed or sold in connection with such Indebtedness less 50% of the actual collections against such accounts, and (ii) in the case of charged-off accounts that have been subject to a prior Securitization Transaction, the aggregate outstanding principal balance of the Indebtedness in such Securitization Transaction at the time such charged-off accounts are released therefrom;

(e) other future Indebtedness of the Company or any Subsidiary that is incurred by the Company or such Subsidiary (i) by releveraging charged-off accounts owned by any Securitization Subsidiary or (ii) on the basis of the Company's or such Subsidiary's equity interest in any Securitization Subsidiary or residual or subordinate interest in any Securitization Transaction (each a "Residual Transaction"); provided, however, that no such Indebtedness shall be incurred unless the net cash proceeds (taking into account payment of applicable Taxes) of such Indebtedness are applied in accordance with Section 4.3;

(f) other future Indebtedness of the Company or any Subsidiary that consists of warehouse financing of charged-off accounts; provided, however, that the aggregate original principal amount of such Indebtedness shall not, when incurred, exceed 100% of the acquisition cost of the accounts being financed in connection with such Indebtedness;

(g) Capitalized Lease Liabilities (i) incurred to finance the acquisition of new assets, not to exceed $6,000,000 at any one time, and (ii) incurred for any other purpose, not to exceed $300,000 at any one time; and

(h) without duplication, Indebtedness disclosed on Item 5.6 ("Ongoing Indebtedness") of the Disclosure Schedule;

provided, however, that, no Indebtedness otherwise permitted pursuant to any of the foregoing clauses (excluding, however, clauses (a) and (b)) shall be permitted if such Indebtedness is owing by the Company to a Subsidiary unless such Indebtedness is expressly subordinated to the prior payment in full in cash of all Obligations and is incurred on such terms and conditions consented to by the Required Noteholders in their discretion.

SECTION 6.2.3 Liens. The Company will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, except:

(a) Liens securing the Obligations;

(b) Liens granted by the Company prior to the Closing Date to secure the Bank of America Indebtedness as in effect on the Closing Date;

(c) Liens granted by the Company to secure its obligations under the Reimbursement Agreement;

(d) Liens granted by a Securitization Subsidiary to secure Indebtedness allowed under clause (d) of Section 6.2.2; provided, however, that no such Lien shall be granted except to create a security interest in the specific charged-off accounts financed or purchased by the beneficiary of such Lien;

(e) Liens granted by the Company or a Subsidiary to secure Indebtedness allowed under clause (e) of Section 6.2.2; provided, however, that no such Lien shall be granted except to create a security interest in the equity interest in any Securitization Subsidiary or residual interest in any Securitization Transaction;

(f) Liens granted by the Company or a Subsidiary to secure Indebtedness allowed under clause (f) of Section 6.2.2; provided, however, that no such Lien shall be granted except to create a security interest in the specific charged-off accounts financed, refinanced or purchased in connection with such warehouse financing; and

(g) Permitted Liens.

SECTION 6.2.4 Bank of America Credit Agreement. The Company will not, and will not permit any Subsidiary to, materially amend, modify or consent to any such material amendment or modification of, the Bank of America Credit Agreement, without the prior written consent of the Required Noteholders which shall not be unreasonably withheld, it being understood and agreed that, without the consent of the Required Noteholders, the Bank of America Credit Agreement may be extended or amended and restated without material departure from the terms and conditions contained therein as of the Closing Date other than market related changes in the interest rate.

SECTION 6.2.5 Restricted Payments, etc. On or after the Closing Date, the Company will not, and will not permit any Subsidiary to, declare, pay, make, apply any of its funds, property or assets to making or making any deposit to fund any Restricted Payment.

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SECTION 6.2.6 Investments. The Company will not, and will not permit any Subsidiary, other than a Securitization Subsidiary in a Securitization Transaction, to, make any Investments, except:

(a) Investments of the Company in any Subsidiary Guarantor that is a wholly-owned Subsidiary;

(b) Cash Equivalent Investments, excluding, however, Investments described in clause (f) of the definition of Cash Equivalent Investments.

(c) Investments made by way of the Company or any wholly-owned Subsidiary of the Company acquiring not less than 51% of the outstanding Capital Stock of any Person, if after giving effect thereto, (x) no Default has occurred and is continuing and (y) such Person becomes a Subsidiary Guarantor in accordance with Section 6.1.6;

(d) capital contributions to a Securitization Subsidiary in connection with (i) the initial closing of any Securitization Transaction, or (ii) any equity or reserve account funding required in connection with the purchase of new charged-off accounts under any warehouse financing;

(e) Investments made in connection with any Securitization Transaction in an amount not greater than 15% of the original principal balance of the Indebtedness incurred under such Securitization Transaction; and

(f) additional Investments not to exceed an amount equal to the product of (x) $500,000 multiplied by (y) a fraction, the numerator of which equals $10,000,000 plus any Indebtedness incurred pursuant to clause (b) of Section 6.2.2, and the denominator of which equals $10,000,000.

SECTION 6.2.7 Consolidation, Merger, etc. The Company will not, and will not permit any Subsidiary to,

(a) liquidate or dissolve, consolidate with, or merge into or with, any other corporation or purchase or otherwise acquire all or substantially all of the assets of any Person (or of any division thereof); or

(b) sell, transfer, convey or otherwise dispose of all or any substantial part of its assets, other than the sale of charged-off accounts sold or otherwise disposed of by a Securitization Subsidiary in connection with a Securitization Transaction;

provided, however, that

(c) any Subsidiary may liquidate or dissolve voluntarily into, and may merge with and into, the Company or any other Subsidiary;

(d) so long as no Payment or Insolvency Default or Event of Default has occurred and is continuing or would occur after giving effect thereto, the Company or any Subsidiary may

purchase or acquire all of the outstanding shares of Capital Stock of, or substantially all of the assets of, any Person (or any division thereof) and such purchase or acquisition complies with clause (c) of Section 6.2.6; and

(e) any Subsidiary may merge with any other corporation permitted to be acquired pursuant to clause (d) and may be created and capitalized for such purposes.

SECTION 6.2.8 Rental Obligations. The Company will not, and will not permit any Subsidiary to, enter into at any time after the Closing Date any lease, except any lease (an "Operating Lease") which is not treated as a capital lease in accordance with GAAP which, together with all other Operating Leases then in effect, will not require the payment of an aggregate amount of rentals by the Company and Subsidiaries in excess of $3,000,000 for any Fiscal Year.

SECTION 6.2.9 Take or Pay Contracts. Except in the ordinary course of business and consistent with past practices, the Company will not, and will not permit any Subsidiary to, enter into or be a party to any arrangement for the purchase of materials, supplies, other property or services if such arrangement by its express terms requires that payment be made by the Company or such Subsidiary regardless of whether such materials, supplies, other property or services are delivered or furnished to it.

SECTION 6.2.10 Negative Pledges, Upstream Restrictions, etc. The Company will not, and will not permit any Subsidiary to, enter into any agreement (excluding, however, this Agreement, the other Purchase Documents and any agreement under which Indebtedness allowed under clause (b) of Section 6.2.2 is incurred) which expressly prohibits or restricts

(a) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired (excluding, however, (w) any agreement governing any Indebtedness permitted by clauses (d), (e) or (f) of Section 6.2.2 as to the assets financed with the proceeds of such Indebtedness, (x) customary non-assignment provisions in operating leases entered into in the ordinary course as to the leasehold interest created thereby, (y) customary non-assignment provisions in contracts, to the extent such provisions prohibit Liens on the rights under such contracts and (z) Liens granted by Securitization Subsidiaries in connection with a Securitization Transaction);

(b) the ability of the Company or any Subsidiary to amend or otherwise modify, or to perform obligations under, this Agreement or any other Purchase Document; or

(c) except as a part of a Residual Transaction, the ability of any Subsidiary to make any payments, directly or indirectly, to the Company by way of dividends, advances, repayments of loans or advances, reimbursements of management and other intercompany charges, expenses and accruals or other returns on Investments, or any other agreement or arrangement which restricts the ability of any such Subsidiary to make any payment, directly or indirectly, to the Company.

SECTION 6.2.11 Transactions with Affiliates. The Company will not, and will not permit any Subsidiary to, enter into, or cause, suffer or permit to exist:

(a) any arrangement or contract with any of its other Affiliates of a nature customarily entered into by Persons which are Affiliates of each other (including management or

similar contracts or arrangements relating to the allocation of revenues, taxes and expenses or otherwise) requiring any payments to be made by the Company or any Subsidiary to any Affiliate unless such arrangement is fair and equitable to the Company or such Subsidiary; or

(b) any other transaction, arrangement or contract with any of its other Affiliates which would not be entered into by a prudent Person in the position of the Company or such Subsidiary with, or which is on terms which are less favorable than are obtainable from, any Person which is not one of its Affiliates;

provided, however, that this Section shall not be construed to restrict or prohibit (i) execution and delivery of the Registration Agreement (ii) customary provisions in Securitization Transactions and Residual Transactions (iii) extensions, refinancings or renewals of the Bank of America Indebtedness, and (iv) the purchase of any interest in the Series No. 1 Notes by any Affiliate of the Company.

SECTION 6.2.12 Asset Dispositions, etc. The Company will not, and will not permit any Subsidiary to, sell (including as part of a sale-leaseback transaction), transfer, lease, contribute or otherwise convey, or grant options, warrants or other rights with respect to, all or any substantial part of its assets (including accounts receivable and capital stock of Subsidiaries) to any Person, unless:

(a) such sale, transfer, lease, contribution or conveyance is in the ordinary course of its business (including the disposition of obsolete equipment and the sale of receivables); or

(b) the net book value of all assets sold, transferred, leased, contributed or conveyed other than in the ordinary course of business by the Company and the Subsidiaries during the same Fiscal Year either (i) does not exceed $500,000 or (ii) the net proceeds above such amount from such sale, transfer, lease, contribution or conveyance are applied in accordance with Section 4.3; or

(c) such sale, transfer, lease, contribution or conveyance consists of a sale or transfer of charged-off accounts by any Subsidiary as in connection with any Securitization Transaction or the incurrence of Indebtedness allowed under clause (d) of Section 6.2.2.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.1 Events of Default. The term "Event of Default" means any of the following events:

SECTION 7.1.1 Non-Payment of Obligations. The Company shall default in the payment or prepayment when due of any principal of any Series No. 1 Note, or, within three (3) Business Days of the due date thereof, the Company shall default in the payment of interest on any Series No. 1 Note or any other Obligation.

SECTION 7.1.2 Default on Other Indebtedness. Any default shall occur under the terms applicable to any recourse Indebtedness (excluding, however, any Obligation) outstanding in a principal amount exceeding $500,000 of the Company or any Subsidiary, in each case representing any borrowing

or financing or arising under any other Material Contract, and such default (x) shall consist of the failure to make any payment of principal or interest on, or any redemption (or to make any required offer to redeem) of, such Indebtedness when due (subject, however, to any applicable notice or grace period or if no notice or grace period is provided, then the continuance of such failure for five (5) Business Days after written notice of such failure is given by the holder of such Indebtedness) in accordance with the terms thereof, or (y) shall allow some or all of the holders of such Indebtedness to cause any or all of such Indebtedness to become, or shall have resulted in any or all of such Indebtedness having become, due and payable in accordance with its terms prior to its stated maturity, whether by declaration or otherwise.

SECTION 7.1.3 Bankruptcy, Insolvency, etc. The Company or any Subsidiary shall:

(a) become insolvent or generally fail to pay, or admit in writing its inability to pay, debts as they become due;

(b) apply for, consent to or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for the Company or any Subsidiary or any property of any thereof or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for the Company or any Subsidiary or for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of the Company or any Subsidiary, and, if such case or proceeding is not commenced by the Company or such Subsidiary, such case or proceeding shall be consented to or acquiesced in by the Company or such Subsidiary or shall result in the entry of an order for relief or shall remain for 60 days undismissed; or

(e) take any corporate action authorizing, or in furtherance of, any of the foregoing.

SECTION 7.1.4 Breach of Warranty. Any warranty of the Company hereunder or in any other Purchase Document or any other writing furnished by or on behalf of the Company to the Purchaser or any other Noteholder for the purposes of or in connection with this Agreement or any such Purchase Document is or shall be incorrect when made in any material respect.

SECTION 7.1.5 Non-Performance of Certain Undertakings. The Company shall default in the due performance and observation of any agreement contained in Section 6.2.4, 6.2.5, 6.2.7, 6.2.9, 6.2.10, 6.2.11 or 6.2.12.

SECTION 7.1.6 Non-Performance of Other Undertakings.

(a) Any Obligor shall default in the due performance and observance of any other agreement contained herein or in any other Purchase Document, and such default shall continue unremedied for a period of 30 days after notice thereof shall have been given to the Company by the Purchaser or the Required Noteholders.

(b) The Company shall be removed as servicer in connection with any securitization financing during the continuance of any event of default thereunder.

SECTION 7.1.7 Judgments. A final judgment, to the extent not fully covered by insurance, shall be rendered against the Company or any Subsidiary and such judgment shall remain in force, undischarged, unsatisfied and unstayed for more than 60 days, whether or not consecutive, and such judgment, together with all other such outstanding final judgments against the Company and Subsidiaries, exceeds (to the extent of all such uninsured portions) an aggregate of $500,000.

SECTION 7.1.8 Pension Plans. Any of the following events shall occur with respect to any Plan:

(a) the institution of any steps by the Company, any member of its Controlled Group or any other Person to terminate a Plan if, as a result of such termination, the Company or any such member could be required to make a contribution to such Plan, or could reasonably expect to incur a liability or obligation to such Plan, in excess of $500,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA.

SECTION 7.1.9 Clean Audit. The auditor's report that accompanies the audited financial statements provided pursuant to clause (a) of Section 6.1.1 for any Fiscal Year other than Fiscal Year 2005 contains a "going concern" qualification, unless such qualification is caused solely by reason of the maturity of the Bank of America Indebtedness or the maturity of the Series No. 1 Notes, or (ii) reports an inability to opine on such financial statements.

SECTION 7.2 Action if Bankruptcy. If any Event of Default described in clauses (a) through (d) of Section 7.1.3 shall occur, the outstanding principal amount of all outstanding Series No. 1 Notes and all other Obligations shall automatically be and become immediately due and payable, without notice or demand.

SECTION 7.3 Action if Other Event of Default. If any Event of Default (excluding, however, any Event of Default described in clauses (a) through (d) of Section 7.1.3) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Required Noteholders may, upon notice or demand, declare all or any portion of the outstanding principal amount of the Series No. 1 Notes to be due and payable and any or all other Obligations to be due and payable, whereupon the full unpaid amount of such Series No. 1 Notes and any and all other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment.

SECTION 7.4 Suits for Enforcement. If any Event of Default shall have occurred and be continuing, the Required Noteholders may proceed to protect and enforce the rights of the holders of such Series No. 1 Notes, either by suit in equity or by action at law, or both, whether for the specific performance of any covenant or agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement, and may proceed to enforce the payment of all sums due upon such Series No. 1 Notes, and such further amounts as shall be sufficient to cover the costs and expenses of

collection (including reasonable counsel fees and disbursements), or to enforce any other legal or equitable right of the holder of such Series No. 1 Notes.

SECTION 7.5 Remedies Cumulative. No remedy conferred in this Agreement or in the other Purchase Documents upon the Noteholders is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 Waivers, Amendments, etc. The provisions of this Agreement and of each Purchase Document may from time to time be amended, waived or otherwise modified, if such amendment, waiver or modification is in writing and consented to by the Company and the Required Noteholders; provided, however, that no such amendment, waiver or modification:

(a) which would modify any requirement hereunder that any particular action be taken by each Noteholder or by the Required Noteholders shall be effective unless consented to by each Noteholder or the Required Noteholders, as the case may be; or

(b) which would modify this Section or change the definition of "Required Noteholders" or which would extend the due date for, or reduce the amount of, any payment or prepayment of principal of or interest on any Series No. 1 Note (or reduce the rate of interest on any Series No. 1 Note) shall be made without the consent of each Noteholder.

No failure or delay on the part of the Purchaser or any other Noteholder in exercising any power or right under this Agreement or any other Purchase Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Company in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Purchaser or any other Noteholder under this Agreement or any other Purchase Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 8.2 Notices. All notices and other communications provided to any party hereto under this Agreement or any other Purchase Document shall be in writing and addressed or delivered to it at its address set forth below its signature hereto or at such other address as may be designated by such party in a notice to the other parties. Any notice, if sent by mail or courier and properly addressed and prepaid, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted and electronically confirmed.

SECTION 8.3 Costs and Expenses. The Company agrees to pay all reasonable out-of-pocket expenses of the Purchaser for the negotiation, preparation, execution and delivery of this Agreement and each other Purchase Document, including Schedules and Exhibits, and any amendments, waivers,

consents, supplements or other modifications to this Agreement, any other Purchase Document, any Subject Security or the Registration Agreement as may from time to time hereafter be required (including the reasonable fees and expenses of counsel for the Purchaser from time to time incurred in connection therewith), whether or not the Transaction is consummated, and to pay all reasonable out-of-pocket expenses of the Purchaser (including reasonable fees and expenses of counsel to the Purchaser) incurred in connection with the preparation and review of the form of any Instrument relevant to this Agreement, any other Purchase Document, any Subject Security or the Registration Agreement and the consideration of legal questions relevant hereto and thereto or to any enforcement or preservation of rights as to, or restructuring or "work-out" of, any Obligations or the rights and preferences of any Subject Security. The Company also agrees to reimburse the Noteholders upon demand for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and legal expenses of a single law firm representing all Noteholders) incurred by the Noteholders to enforce or to preserve rights as to, or to restructure or "work out", any Obligations.

SECTION 8.4 Indemnification. In consideration of the execution and delivery of this Agreement by the Purchaser, the Company hereby indemnifies, exonerates and holds the Purchaser and each other Noteholder and each of their respective officers, directors, employees, trustees and agents (the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses actually incurred in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to:

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Series No. 1 Note,

(b) the entering into and performance of this Agreement and any other Purchase Document by any of the Indemnified Parties (including any action brought by or on behalf of the Company as the result of any determination by the Purchaser pursuant to Article III to not purchase the Subject Securities), or

(c) any investigation, litigation or proceeding related to the Transaction,

excluding, however, any such Indemnified Liabilities arising for the account of a particular Indemnified Party by reason of the relevant Indemnified Party's gross negligence or wilful misconduct. If, and to the extent that, the foregoing undertaking may be unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under Applicable Law.

SECTION 8.5 Survival. The obligations of the Company under clauses (b) and (c) of Section 6.1 and clause (b) of Section 6.2 shall survive the payment in full of all Obligations and the termination of any other provisions of this Agreement or any other Purchase Document and shall continue for the benefit of the Purchaser for so long as it shall hold any Subject Securities. The obligations of the Company under Section 8.4 shall remain in full force and effect, regardless of any investigation made by or on behalf of any Indemnified Party, and the obligations of the Company under Sections 8.3 and 8.4 shall survive the payment or prepayment of the Subject Securities, at maturity, upon redemption or otherwise, any transfer of the Subject Securities by the Purchaser, and any termination of this Agreement and the other Purchase

Documents. The representations and warranties made by the Company in this Agreement and in each other Purchase Document shall survive the execution and delivery of this Agreement and each such other Purchase Document.

SECTION 8.6 Severability. Any provision of this Agreement or any other Purchase Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such Purchase Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 8.7 Headings. The various headings of this Agreement and of each other Purchase Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such Purchase Document or any provisions hereof or thereof.

SECTION 8.8 Counterparts. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be executed by the Company and the Purchaser and be deemed to be an original and all of which shall constitute together but one and the same agreement.

SECTION 8.9 Governing Law. This Agreement, the Series No. 1 Notes, the Subsidiary Guaranty and each other Purchase Document shall each be deemed to be a contract made under and governed by the internal laws of the State of New York.

SECTION 8.10 JURISDICTION. FOR PURPOSE OF ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT OR ANY OTHER PURCHASE DOCUMENT, THE COMPANY HEREBY EXPRESSLY SUBMITS TO THE JURISDICTION OF ALL FEDERAL AND STATE COURTS LOCATED IN THE CITY OF NEW YORK, STATE OF NEW YORK AND CONSENTS THAT IT MAY BE SERVED WITH ANY PROCESS OR PAPER BY REGISTERED MAIL OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK, PROVIDED A REASONABLE TIME FOR APPEARANCE IS ALLOWED.

SECTION 8.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

(a) the Company may not assign or transfer its rights or obligations hereunder without the prior written consent of all Noteholders; and

(b) the rights of sale, assignment, and transfer of the Series No. 1 Notes are subject to Section 4.7.

SECTION 8.12 WAIVER OF JURY TRIAL. THE PURCHASER AND THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER PURCHASE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PURCHASER OR THE COMPANY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PURCHASER ENTERING INTO THIS AGREEMENT.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

MCM CAPITAL GROUP, INC.

By: /s/ Robert E. Koe

Name: Robert E. Koe

Title: President

Address: 4302 East Broadway
Phoenix, Arizona 85040
Telephone: (602) 707-0211
Facsimile: (602) 707-5509

Attention: President

Copy to: Timothy W. Moser, Esq.
Squire, Sanders & Dempsey LLP
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004

ING (U.S.) CAPITAL LLC

By: /s/ David Balestrery

Name: David Balestrery

Title: Vice President

Address: 55 East 52nd Street
New York, New York 10015
Telephone: (212) 409-1955
Facsimile: (212) 593-3360

Attention: David A. Balestrery
Ira Braunstein

Copy to: David K. Duffee, Esq.
Mayer, Brown & Platt
1675 Broadway
New York, New York 10019-5820

Payments to: The Chase Manhattan Bank
(ABA No. 021000021)
Account No. 930 103 5763

EXHIBIT 10.2

WARRANT AGREEMENT

dated as of January 12, 2000

between

MCM CAPITAL GROUP, INC.

and

ING (U.S.) CAPITAL LLC

for
Warrants to Purchase
428,571 shares of Common Stock

WARRANT AGREEMENT

This WARRANT AGREEMENT, dated as of January 12, 2000 (this "Agreement") is entered into by and between MCM Capital Group, Inc., a Delaware corporation (the "Company"), and ING (U.S.) Capital LLC, a Delaware limited liability company (the "Purchaser").

W I T N E S S E T H:

WHEREAS, the Company is a party with the Purchaser to a note purchase agreement, dated as of January 12, 2000 (the "Note Purchase Agreement"), pursuant to which the Company has agreed, on and subject to the occurrence of the Closing Date under the Note Purchase Agreement, to issue and sell to the Purchaser the Warrants which, subject to the adjustments provided herein, entitle the Purchaser to purchase 428,571 shares of common stock, $.01 par value per share, of the Company (the "Common Stock").

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. CERTAIN DEFINED TERMS. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the respective meanings specified below :

"Additional Notes" shall mean up to $40,000,000 in aggregate principal amount of notes issued by the Company subsequent to the Closing Date pursuant to Section 6.2.2(b) of the Note Purchase Agreement.

"Additional Warrants" shall mean warrants, options or similar rights to purchase Common Stock on terms and conditions, and in a form, substantially similar to the Warrants, which are issued to the purchasers of Additional Notes in connection with the sale of such Additional Notes by the Company and the purchase thereof by such purchaser.

"Affiliate" shall have the meaning specified in the Note Purchase Agreement.

"Agreement" or "this Agreement" shall have the meaning specified in the preamble to this Agreement.

"Board" shall mean the board of directors of the Company.

"Closing Date" shall have the meaning specified in the Note Purchase Agreement.

"Common Stock" shall have the meaning specified in the recitals to this Agreement.

"Company" shall have the meaning specified in the preamble to this Agreement.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"Exercise Price" shall have the meaning specified in Section 3.01.

"Expiration Date" shall be January 12, 2005.

"Fair Market Value" shall mean, with respect to any shares of Common Stock as of any date of determination, (i) if such shares of Common Stock are not Publicly Traded, the fair value of such shares of Common Stock (A) as determined reasonably and in good faith in the most recently completed arm's-length transaction between the Company and an unaffiliated third party in which such determination is necessary and the closing of which shall have occurred within the six months preceding such date of determination, or (B) if no such transaction shall have occurred within such six-month period, as determined in accordance with the Valuation Criteria reasonably and in good faith by an Independent Financial Expert appointed by the Board and consented to by the Purchaser (such consent not to be unreasonably withheld); or (ii) if such shares of Common Stock are Publicly Traded, the Market Price of such shares of Common Stock on the trading day immediately preceding such date of determination; provided, however, that with respect to shares of Common Stock issuable upon the exercise of options under a stock option plan or the issuance of shares of Common Stock under an employee stock incentive plan, the Fair Market Value of such shares shall be determined in accordance with the applicable provisions of such plan (if any).

"Holders" shall mean the registered holders from time to time of the Warrants and, unless otherwise provided or indicated herein, the registered holders from time to time of the Underlying Common Stock.

"Incremental Note Principal" shall mean, with respect to any issuance of Additional Notes, the sum of aggregate principal amount of such Additional Notes, plus the aggregate principal amount of all Additional Notes issued prior thereto.

"Incremental Warrant Shares" shall mean, with respect to any issuance of Additional Warrants, the sum of the number of shares of Common Stock issuable upon exercise of such Additional Warrants, plus the number of shares of Common Stock issuable upon exercise of all Additional Warrants issued prior thereto.

"Independent Financial Expert" shall mean a nationally recognized investment banking firm (i) that does not (and whose directors, officers, employees and affiliates do not) have a direct or indirect financial interest in the Company or any of its Affiliates, and (ii) that is not, and none of whose directors, officer, employees or Affiliates are, at the time it is called upon to

render independent financial advice to the Company, a promoter, director or officer of the Company or any of its Affiliates or an underwriter or placement agent with respect to any of the securities of the Company or any of its Affiliates, nor have the Company or any such directors, officers, employees or Affiliates acted in such capacity during the three year period prior thereto.

"Market Price" shall mean, with respect to any shares of Common Stock that are Publicly Traded, for any specified trading day, (i) in the case of shares of Common Stock listed or admitted to trading on any securities exchange or on the Nasdaq National Market or the Nasdaq SmallCap Market, the average closing price, or if no sale takes place on a particular day, the average of the closing bid and asked prices on such day, for the ten (10) trading days prior to the date in question, (ii) in the case of shares of Common Stock not then listed or admitted to trading on any securities exchange or on the Nasdaq National Market or the Nasdaq SmallCap Market, the average last reported sale price, or if no sale takes place on a particular day, the average of the closing bid and asked prices on such day, for the ten (10) trading days prior to the date in question, as reported by a reputable quotation source designated by the Company, and (iii) if there are no bid and asked prices reported during the ten (10) trading days prior to the specified date, the Fair Market Value of such shares of Common Stock as determined as if such shares of Common Stock were not Publicly Traded.

"Note Purchase Agreement" shall have the meaning specified in the recitals to this Agreement.

"Person" shall mean any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization or other entity or any government or political subdivision, agency or instrumentality thereof, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

"Publicly Traded" shall mean, relative to any security, that such security is (i) listed on a domestic securities exchange, (ii) quoted on the Nasdaq National Market or the Nasdaq SmallCap Market, or (iii) traded in the domestic over-the-counter market, which trades are reported on the OTC Electronic Bulletin Board or reported by the National Quotation Bureau, Incorporated.

"Purchaser" shall have the meaning specified in the preamble to this Agreement.

"Rights" shall mean any "poison pill" or similar shareholder rights issued pursuant to a "poison pill" shareholder rights plan or similar plan.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations thereunder.

"Series No. 1 Note" shall have the meaning specified in the Note Purchase Agreement.

"Series No. 1 Note Ratio" shall mean a fraction, the numerator of which is the aggregate original principal amount of the Series No. 1 Notes and the denominator of which is the Incremental Note Principal.

"Taxes" shall mean all transfer, stamp, documentary and other similar taxes, assessments or charges levied by any governmental or revenue authority in respect hereof in respect of any Warrant or any Warrant Certificate, excluding, however, franchise taxes and taxes, assessments or charges levied or imposed on or measured by the net income or receipts of any Person.

"Underlying Common Stock" shall mean the shares of Common Stock issuable or issued upon the exercise of the Warrants.

"Valuation Criteria" shall mean one or more valuation methods that the Independent Financial Expert or the Board, as the case may be, in its professional or reasonable business judgment, as the case may be, determines to be most appropriate for use in determining the Fair Market Value of any securities for which such determination is required pursuant to this Agreement.

"Warrant Certificates" shall have the meaning specified in Section 2.01 of this Agreement.

"Warrants" shall mean the warrants issued to the Purchaser on the Closing Date as contemplated by this Agreement and the Note Purchase Agreement, which warrants initially entitle the Purchaser to purchase 428,571 shares of Common Stock.

ARTICLE II
ORIGINAL ISSUE OF WARRANTS; TRANSFER

Section 2.01. FORM OF WARRANT CERTIFICATES. The Warrants shall be evidenced by certificates in registered form only and substantially in the form attached hereto as Exhibit A (the "Warrant Certificates"), shall be dated the date on which signed by the Company and may have such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law or with any rule or regulation applicable thereto, with any rule or regulation of any securities exchange or association on which the Warrants may be listed, or to conform to customary usage.

Section 2.02. EXECUTION AND DELIVERY OF WARRANT CERTIFICATES. Warrant Certificates evidencing the Warrants shall be executed by the Company and delivered on the Closing Date to the Purchaser. The Warrant Certificates shall be executed on behalf of the Company by one or more duly authorized officers of the Company.

Section 2.03. TRANSFER OF WARRANTS.

(a) Subject to clause (b) of this Section 2.03 and provided that all conditions to transfer set forth in this Agreement and in the Note Purchase Agreement have been satisfied, each Warrant and the rights thereunder may be transferred by the Holder thereof delivering to the Company the Warrant Certificate evidencing such Warrant accompanied by a properly completed assignment form (a form of which is attached to the form of Warrant Certificate

attached as Exhibit A to this Agreement). Within ten (10) Business Days of receipt of such assignment form, the Company shall issue and deliver to the transferee, subject to clause (b) below, a Warrant Certificate of like kind and tenor representing the transferred Warrants and to the transferor a Warrant Certificate of like kind and tenor representing any Warrants evidenced by such original certificate that are not being transferred. Each Warrant Certificate issued pursuant to this Section 2.03 shall be substantially in the form of Exhibit A to this Agreement and shall bear the restrictive legends set forth thereon (unless, with respect to the legend regarding transfer under applicable securities laws, the Holder or transferee thereof supplies to the Company an opinion of counsel, reasonably satisfactory to the Company, that the restrictions described in such legend are no longer applicable to such Warrants).

(b) The transfer of Warrants shall be permitted only pursuant to a transaction that complies with, or is exempt from, the provisions of the Securities Act and any applicable provisions of state securities laws, and the Company may require an opinion of counsel, reasonably satisfactory to the Company, to such effect prior to the transfer of any Warrant.

ARTICLE III
EXERCISE PRICE; EXERCISE OF WARRANTS GENERALLY

Section 3.01. EXERCISE PRICE. Each Warrant Certificate shall entitle the Holder thereof, subject to the provisions of the Agreement, to purchase one share of Common Stock for each Warrant represented thereby at an exercise price (the "Exercise Price") of $0.01 per share.

Section 3.02. EXERCISE OF WARRANTS. Subject to the terms and conditions set forth herein, the Warrants shall be exercisable beginning on the 91st day after the Closing Date through the Expiration Date, as follows: (i) for the period beginning on the 91st day after the Closing Date and ending on the 270th day after the Closing Date, for not more than 50% of the aggregate number of shares of Common Stock issuable upon exercise of the Warrants from time to time (giving effect to the adjustments contemplated by Section 4.01 of this Agreement); and (ii) beginning on the 271st day after the Closing Date and ending on the Expiration Date, for up to 100% of the aggregate number of shares of Common Stock issuable upon exercise of the Warrants from time to time.

Section 3.03. EXPIRATION OF WARRANTS. The Warrants shall terminate and become void as of the close of business on the Expiration Date.

Section 3.04. METHOD OF EXERCISE.

(a) In order to exercise a Warrant, the Holder thereof must surrender the Warrant Certificate evidencing such Warrant to the Company, with one of the forms on the reverse of or attached to the Warrant Certificate duly executed, and by paying in full to the Company (i) by wire transfer of immediately available funds, or (ii) by certified or official bank check, or (iii) by any combination of the foregoing, the Exercise Price for each share of Underlying Common Stock as to which Warrants are then being exercised. A Holder may exercise such Holder's Warrant for the full number of shares of Underlying Common Stock

issuable upon exercise thereof (subject to the limitations set forth in Section 3.02) or any lesser number of whole shares of Underlying Common Stock.

(b) Not later than the fifth Business Day following the later of (i) surrender of a Warrant Certificate in conformity with the foregoing provisions or (ii) payment by the Holder of the full Exercise Price for the shares of Underlying Common Stock as to which such Warrants are then being exercised, the Company shall transfer to the Holder of such Warrant Certificate appropriate evidence of ownership of any shares of Underlying Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, such name or names as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the person or persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 4.04. If such Warrant Certificate shall not have been exercised in full, the Company will issue to such Holder a new Warrant Certificate exercisable for the number of shares of Underlying Common Stock as to which such Warrant shall not have been exercised. Any registration of Underlying Common Stock issued upon exercise of a Warrant in the name of any person other than the registered holder of the Warrant shall be subject to Sections 5.03 and 5.04 of this Agreement.

(c) Each person in whose name any certificate representing shares of Underlying Common Stock is issued shall for all purposes be deemed to have become the holder of record of such shares of Underlying Common Stock on the date on which the Warrant Certificate was surrendered to the Company and payment of the Exercise Price therefor, irrespective of the date of delivery of such certificate representing shares of Underlying Common Stock.

Section 3.05. CANCELLATION OF WARRANTS. The Company shall cancel any Warrant Certificate delivered to it for exercise, in whole or in part, or delivered to it for transfer, exchange or substitution, and no Warrant Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall destroy canceled Warrant Certificates. If the Company shall acquire any of the Warrants, such acquisition shall not operate as a redemption or termination of the right represented by such Warrants unless and until the Warrant Certificates evidencing such Warrants are surrendered to the Company for cancellation.

ARTICLE IV
ADJUSTMENTS

Section 4.01. ADJUSTMENTS. The number of shares of Common Stock issuable upon exercise of each Warrant shall be subject to adjustment from time to time as follows:

(a) Stock Dividends; Stock Splits; Reverse Stock Splits; Reclassifications. In the event that the Company shall (i) pay a dividend or make any other distribution with respect to its Common Stock in shares of its capital stock, (ii) subdivide its outstanding Common Stock, (iii) combine its outstanding Common Stock into a smaller number of shares, or (iv) issue any shares of its capital stock in a reclassification of the Common Stock (including any such

reclassification in connection with a merger, consolidation or other business combination in which the Company is the continuing corporation), the number of shares of Common Stock issuable upon exercise of each Warrant immediately prior to the record date for such dividend or distribution, or the effective date of such subdivision or combination, shall be adjusted so that the Holder of each Warrant shall thereafter be entitled to receive the kind and number of shares of Common Stock or other securities of the Company that such Holder would have owned or have been entitled to receive after the happening of any of the events described above, had such Warrant been exercised immediately prior to the happening of such event or any record date with respect thereto. An adjustment made pursuant to this Section 4.01(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) Issuance of Common Stock, Rights, Options or Warrants at Lower Values.

(i) In the event that the Company shall issue or sell shares of Common Stock, or rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock, at a price per share of Common Stock (determined in the case of such rights, options, warrants or convertible or exchangeable securities, by dividing (x) the total amount of Consideration receivable by the Company in respect of the issuance and sale of such rights, options, warrants or convertible or exchangeable securities, plus the total Consideration, if any, payable to the Company upon exercise, conversion or exchange thereof, by (y) the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities) that is lower than the then Fair Market Value per share of the Common Stock immediately prior to such sale or issuance, then the number of shares of Common Stock thereafter issuable upon the exercise of each Warrant then outstanding shall equal the Pre-Issuance Value per Warrant divided by the Unadjusted Post-Issuance Value per Warrant. Such adjustment shall be made successively whenever any such sale or issuance is made.

(ii) For purposes of this Section 4.01(b), (A) "Pre-Issuance Value per Warrant" shall mean (1) the total number of shares of Common Stock then issuable upon exercise of each Warrant, multiplied by (2) the Fair Market Value per share of Common Stock immediately prior to any issuance or sale described in Section 4.01(b)(i); and (B) "Unadjusted Post-Issuance Value per Warrant" shall mean (1) the sum of (x) the total number of shares of Common Stock (including shares of Common Stock issuable upon exercise of outstanding Warrants and Additional Warrants) outstanding immediately prior to any issuance or sale described in Section 4.01(b)(i), multiplied by the Fair Market Value per share of Common Stock immediately prior to such issuance or sale, plus (y) the total number of additional shares of Common Stock issued or sold by the Company (including, in the case of rights, options, warrants or convertible or exchangeable securities, the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities), multiplied by the price per share of Common Stock for which such additional shares of Common Stock were issued or sold (including, in the case of rights, options, warrants or convertible or exchangeable securities, the total amount of Consideration per share receivable by the Company in respect of the issuance and sale of such rights, options, warrants or convertible or exchangeable securities, plus the total Consideration per share, if any, payable to the Company upon exercise, conversion

or exchange thereof), divided by (2) the total number of shares of Common Stock outstanding immediately after such issuance or sale (including, in the case of rights, options, warrants or convertible or exchangeable securities, the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities and including shares of Common Stock issuable upon exercise of outstanding Warrants and Additional Warrants).

(iii) In the event that the Company shall issue and sell shares of Common Stock or rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock for consideration consisting, in whole or in part, of property other than cash or its equivalent, then in determining the "price per share of Common Stock" and the "Consideration" receivable by or payable to the Company for purposes of this Section 4.01, the Board shall determine, in good faith, the fair value of such property. In the event that the Company shall issue and sell rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock, together with one or more other securities as part of a unit at a price per unit, then in determining the "price per share of Common Stock" and the "Consideration" receivable by or payable to the Company for purposes of this Section 4.01, the Board shall determine, in good faith, the fair value of the rights, options, warrants or convertible or exchangeable securities then being sold as part of such unit.

(iv) Any adjustment to the number of shares of Common Stock issuable upon exercise of all Warrants then outstanding made pursuant to this Section 4.01(b) shall be allocated among each Warrant then outstanding on a pro rata basis.

(v) Notwithstanding anything herein to the contrary, the provisions of this Section 4.01(b) shall not apply to any of the following:

(A) the grant or issuance of restricted stock, options or other similar rights issued pursuant to employee stock option plans, directors stock option plans or similar plans providing for options or other similar rights to purchase Common Stock covering in the aggregate not in excess of 20% of the fully-diluted shares of Common Stock issued and outstanding from time to time, or the issuance of shares upon exercise of any such options or other similar rights,

(B) the issuance of shares upon the exercise of options, warrants, convertible or exchangeable securities, or similar securities that are convertible into Common Stock in accordance with their terms, that are issued and outstanding as of the date of this Agreement (giving effect to the transactions relating to the issuance of the Series No. 1 Notes, including without limitation the issuance of the Warrants),

(C) the issuance of any Additional Warrants,

(D) the issuance of any Rights,

(E) the issuance of shares of capital stock pursuant to any stock dividend, stock split or other distribution in respect of outstanding shares, and

(F) the issuance of Common Stock or securities convertible into Common Stock pursuant to an underwritten offering (including, without limitation, any such securities issued pursuant to the underwriters' overallotment option).

(c) Sale of Additional Notes. In the event that the Company shall issue or sell any Additional Notes and, in connection therewith, shall issue any Additional Warrants, the aggregate number of shares of Common Stock thereafter issuable upon the exercise of the Warrants then outstanding shall equal (i) the product obtained by multiplying the Series No. 1 Note Ratio by the Incremental Warrant Shares, minus (ii) the number of shares of Underlying Common Stock, if any, that have theretofore been issued upon exercise of Warrants; provided, however, that no adjustment pursuant to this subsection (c) shall reduce the number of shares issuable upon exercise of a Warrant.

(d) Issuance of Rights. In the event that the Company shall distribute any Rights prior to the exercise or expiration of the Warrants, the Company shall make proper provision so that each Holder who exercises a Warrant after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such exercise, in addition to the shares of Common Stock issuable upon such exercise, a number of Rights determined as follows: (A) if such exercise occurs on or prior to the date fixed for the distribution to the holders of Rights of separate securities evidencing such Rights, the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of shares of Underlying Common Stock issuable upon such exercise would have been entitled at the time of such exercise in accordance with the terms and provisions applicable to the Rights, and (B) if such exercise occurs after such distribution date, the same number of Rights to which a holder of the number of shares of Underlying Common Stock into which the Warrant so exercised was exercisable immediately prior to such distribution date would have been entitled on the distribution date in accordance with the terms and provisions applicable to the Rights.

(e) Expiration Of Rights, Options and Conversion Privileges. Upon the expiration of any rights, options, warrants or conversion or exchange privileges that have previously resulted in an adjustment pursuant to Section 4.01(b) or Section 4.01(c), if any thereof shall not have been exercised, the number of shares of Common Stock issuable upon the exercise of each Warrant shall, upon such expiration, be readjusted and shall thereafter, upon any future exercise, be such as they would have been had they been originally adjusted (or had the original adjustment not been required, as the case may be) as if (i) the only shares of Common Stock so issued were the shares of Common Stock, if any, actually issued or sold upon the exercise of such rights, options, warrants or conversion or exchange rights and (ii) such shares of Common Stock, if any, were issued or sold for the Consideration actually received by the Company upon such exercise plus the Consideration, if any, actually received by the Company for issuance, sale or grant of all such rights, options, warrants or conversion or exchange rights whether or not exercised.

(f) De Minimis Adjustments. No adjustment in the number of shares of Common Stock issuable hereunder shall be required unless such adjustment would require an increase or decrease of at least one percent in the number of share of Common Stock purchasable upon an

exercise of each Warrant; provided, however, that any adjustments which by reason of this Section 4.01(f) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest one-tenth of a share.

Section 4.02. DETERMINATION OF ADJUSTMENT. Whenever the number of shares of Common Stock issuable upon the exercise of each Warrant is adjusted as herein provided, a certificate of an officer of the Company setting forth the number of shares of Common Stock issuable upon the exercise of each Warrant after such adjustment, setting forth a brief statement of the facts requiring such adjustment and setting forth the computation by which such adjustment was made (in reasonable detail), shall, absent demonstrable error, be conclusive evidence of such adjustment. The Company shall be entitled to rely on such certificate and shall exhibit the same from time to time to any Holder desiring an inspection thereof during normal business hours.

Section 4.03. STATEMENT ON WARRANTS. Irrespective of any adjustment in the number or kind of shares issuable upon the exercise of the Warrants, certificates evidencing Warrants theretofore or thereafter issued may continue to express the same price and number and kind of shares as are stated in the Warrants initially issuable pursuant to this Agreement.

Section 4.04. FRACTIONAL INTEREST. The Company shall not be required to issue fractional shares of Common Stock on the exercise of Warrants. If more than one Warrant shall be presented for exercise in full at the same time by the same Holder, the number of full shares of Common Stock which shall be issuable upon such exercise thereof shall be computed on the basis of the aggregate number of shares of Common Stock acquirable on exercise of the Warrants so presented. If any fraction of a share of Common Stock would, except for the provisions of this Section 4.04, be issuable on the exercise of any Warrant (or specified portion thereof), the Company shall pay an amount in cash calculated by it to be equal to the then Fair Market Value per share of Common Stock multiplied by such fraction computed to the nearest whole cent.

ARTICLE V
ADDITIONAL AGREEMENTS

Section 5.01. WARRANT TRANSFER BOOKS.

(a) The Warrant Certificates shall be issued in registered form only. The Company shall keep at its executive office a register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Warrant Certificates and of transfers or exchanges of Warrant Certificates as herein provided.

(b) Every Warrant Certificate surrendered for registration of transfer or exchange shall (if so required by the Company) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, duly executed by the Holder thereof or his attorney duly authorized in writing.

Section 5.02. NO STOCK RIGHTS. Prior to the exercise of the Warrants, no holder of a Warrant Certificate, as such, shall be entitled to vote or be deemed the holder of Common Stock or any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained herein be construed to confer upon any holder of a Warrant Certificate, as such, the rights of a stockholder of the Company or the right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, to exercise any preemptive right, to receive notice of meetings or other actions affecting stockholders (except as specifically provided herein), or to receive dividends or subscription rights or otherwise.

Section 5.03. RESTRICTIONS ON TRANSFER. The Holder of any Warrant Certificate, by acceptance thereof, acknowledges and agrees that the Warrants and the Underlying Common Stock issuable upon exercise of such Warrants shall be subject to the terms and conditions of the Note Purchase Agreement, as such document may be in effect from time to time, including, without limitation, the provisions therein relating to restrictions on transfer. Without limitation of the obligations set forth in Section 5.07, it shall be a condition precedent to any transfer of the Warrant that each proposed transferee execute and deliver to the Company the documentation required by such Section 5.07.

Section 5.04. NO REGISTRATION OF WARRANTS OR UNDERLYING COMMON STOCK UNDER SECURITIES LAWS; OTHER REGULATORY FILINGS.

(a) Neither the Warrants nor the Underlying Common Stock have been registered under the Securities Act or any state securities laws.

(b) The Holder of any Warrant Certificate, by acceptance thereof, represents that it is acquiring the Warrants to be issued to it for its own account and not with a view to the distribution thereof, and agrees not to sell, transfer, pledge or hypothecate any Warrants or any Underlying Common Stock unless (i) (A) such transfer is made in connection with an effective registration statement under the Securities Act and any applicable state securities laws or (B) the Holder thereof has furnished the Company a satisfactory opinion of counsel for such Holder to the effect that such transaction is exempt from the registration requirements of the Securities Act, the rules and regulations in effect thereunder and any applicable state securities laws, and (ii) such transfer is made in accordance with terms and conditions set forth in the Note Purchase Agreement relating to restrictions on transfer to the extent the Warrants or Underlying Common Stock are subject thereto.

(c) Each Holder of Warrants also hereby acknowledges that any exercise of the Warrants may be subject to the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and agrees to make any such required filings prior to any such exercise.

Section 5.05. RESERVATION OF COMMON STOCK FOR ISSUANCE ON EXERCISE OF WARRANTS. The Company shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of issue upon exercise of Warrants as herein provided, such number of shares of Common Stock as shall then be issuable

upon the exercise of all outstanding Warrants. All shares of Common Stock which shall be so issuable shall, upon such issue and upon payment of the exercise price therefor as provided herein and in the applicable Warrant Certificate, be duly and validly issued and fully paid and non-assessable.

Section 5.06. PAYMENT OF TAXES. The Company shall pay all Taxes that may be imposed on the Company or on the Warrants or on any securities deliverable upon exercise of Warrants with respect thereto. The Company shall not be required, however, to pay any Taxes or other charges imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock or other securities underlying the Warrants or payment of cash to any person other than the Holder of a Warrant Certificate surrendered upon the exercise or purchase of a Warrant.

Section 5.07. CERTAIN PERSONS TO EXECUTE AGREEMENT. Without in any way limiting any transfer restrictions contained elsewhere herein or in the Note Purchase Agreement, no Holder shall sell or otherwise transfer any Warrants held by such Holder, unless, prior to the consummation of any such sale or other disposition, the person to whom such sale or other disposition is proposed to be made executes and delivers to the Company an agreement, in form and substance satisfactory to the Company, whereby such prospective transferee confirms that, with respect to the Warrants that are the subject of such sale or other disposition, it shall be deemed to be a "Holder" for the purposes of this Agreement and agrees to be bound by all the terms of this Agreement and all applicable terms of the Note Purchase Agreement. Upon the execution and delivery by such prospective transferee of the agreement referred to in the next preceding sentence, and subject to all applicable transfer restrictions, such prospective transferee shall be deemed a "Holder" for the purposes of this Agreement, and shall have the rights and be subject to the obligations of a Holder hereunder with respect to the Warrants held by such prospective transferee.

ARTICLE VI
MISCELLANEOUS

Section 6.01. EXPENSES. Except as otherwise specified in this Agreement or in the Note Purchase Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 6.02. NOTICES. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, or by courier service, cable, telecopy, telegram, or registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at their addresses set forth on the signature pages to this Agreement (or at such other address for a party hereto as shall be specified in a notice given in accordance with this Section 6.02).

Section 6.03. HEADINGS. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning, construction or interpretation of this Agreement.

Section 6.04. SEVERABILITY. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 6.05. MUTILATED OR MISSING WARRANT CERTIFICATES. If any Warrant Certificate is lost, stolen, mutilated or destroyed, the Company in its discretion may issue, in exchange and substitution for and upon cancellation of the mutilated Warrant Certificate, or in lieu of and substitution for the Warrant Certificate lost, stolen or destroyed, and upon receipt of a proper affidavit or other evidence satisfactory to the Company (and surrender of any mutilated Warrant Certificate) and bond of indemnity in form and amount and with corporate surety satisfactory to the Company in each instance protecting the Company, a new Warrant Certificate of like tenor and exercisable for an equivalent number of shares of Common Stock as the Warrant Certificate so lost, stolen, mutilated or destroyed. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate at any time shall be enforceable by anyone. An applicant for such a substitute Warrant Certificate also shall comply with such other reasonable regulations and pay such other reasonable charges as the Company may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement of lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement of negotiable instruments or other securities without their surrender.

Section 6.06. ENTIRE AGREEMENT. This Agreement and the documents referred to herein constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, between or among the parties with respect to the subject matter hereof.

Section 6.07. NO THIRD PARTY BENEFICIARIES. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, whether express or implied, is intended to or shall confer upon any person other than the parties hereto and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 6.08. AMENDMENT; WAIVER. This Agreement may not be amended, modified, supplemented or waived except by an instrument in writing signed by, or on behalf of, the Company and holders of more than 50% of the outstanding Warrants or, in the case of a waiver, the party to be bound thereby (which, in the case of the Holders of the Warrants, shall require Holders of more than 50% of the outstanding Warrants).

Section 6.09. GOVERNING LAW. IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS OF EACH PARTY ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED IN AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICT OF LAWS.

Section 6.10. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 6.11. PURCHASE DOCUMENT. This Agreement is a Purchase Document for purposes of the Note Purchase Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof.

Section 6.12. SPECIFIC PERFORMANCE. Each Holder shall have the right to specific performance by the Company of the provisions of this Agreement, in addition to any other remedies that it may have at law or in equity. The Company hereby irrevocably waives, to the extent that it may do so under applicable law, any defense based on the adequacy of a remedy at law which may be asserted as a bar to the remedy of specific performance in any action brought against the Company for specific performance of this Agreement by the Holders of the Warrants or the Underlying Common Stock.

Section 6.13. FILINGS. The Company shall, at its own expense and to the extent it is reasonably able to do so, promptly execute and deliver, or cause to be executed and delivered, to any Holder of Warrants all applications, certificates, instruments and other documents that such Holder may reasonably request in connection with the obtaining of any consent, approval, qualification or authorization of any Federal, state or local government (or any agency or commission thereof) necessary or appropriate in connection with, or for the effective exercise of, any Warrants then held by such Holder, in each case subject to such confidentiality obligations as the Company may reasonably impose on such Holder; provided, however, that the Company shall not be required to qualify to do business in, or provide a general consent to service of process in, any jurisdiction in which it is not already qualified to do business and shall not be required to register the Warrants or the Underlying Common Stock under any federal or state securities laws except as otherwise required under any registration rights agreement (or similar agreement) to which the Company may be a party from time to time.

Section 6.14. OTHER TRANSACTIONS. Nothing contained herein shall preclude the Holder from engaging in any transaction, in addition to those contemplated by this Agreement, with the Company or any of its Affiliates in which the Company or such Affiliate is not restricted hereby from engaging with any other Person.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date fast above written.

MCM CAPITAL GROUP, INC.

By: /s/ Gregory G. Meredith

Name: Gregory G. Meredith
Title: Secretary

ING (U.S.) CAPITAL LLC

By: /s/ David Balestrery

Name: David Balestrery
Title: Vice President

EXHIBIT A

[FORM OF WARRANT CERTIFICATE]

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF, AND NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER, UNLESS (i) SUCH TRANSFER IS MADE IN CONNECTION WITH AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (ii) THE COMPANY HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER HEREOF THAT SUCH TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT, THE RULES AND REGISTRATIONS IN EFFECT THEREUNDER AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SECURITIES EVIDENCED BY THIS CERTIFICATE AND THE SECURITIES ISSUABLE UPON THE EXERCISE OF THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN A WARRANT AGREEMENT AND A NOTE PURCHASE AGREEMENT, EACH DATED AS OF JANUARY 12, 2000, AS THEREAFTER AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH.

MCM CAPITAL GROUP, INC.

WARRANT CERTIFICATE
Dated as of _____, _____

WARRANTS TO PURCHASE ____ SHARES OF COMMON STOCK

Certificate No. ___
Number of Warrants: _____

MCM CAPITAL GROUP, INC., a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies that, for value received, ING (U.S.) CAPITAL, LLC, or its registered assigns, is the registered holder of the number of Warrants set forth above (the "Warrants"). Each Warrant shall entitle the registered holder thereof (the "Holder"), during the time periods specified below and subject to the provisions contained herein and in the Warrant Agreement (as defined below), to receive from the Company one share of Common Stock, par value $0.01 per share, of the Company ("Common Stock"), subject to adjustment upon the occurrence of certain events as more fully described in the Warrant

Agreement, at an exercise price of $0.01 per share. The Warrants shall be exercisable beginning on April 12, 2000 through January 12, 2005 (the "Expiration Date"), as follows: (i) for the period beginning on April 12, 2000 and ending on the October 9, 2000, for not more than 50% of the aggregate number of shares of Common Stock issuable upon exercise of the Warrants from time to time (giving effect to the adjustments contemplated by Section 4.01 of the Warrant Agreement referred to below); and (ii) beginning on October 10, 2000 and ending on the Expiration Date, for up to 100% of the aggregate number of shares of Common Stock issuable upon exercise of the Warrants from time to time. This Warrant Certificate shall terminate and become void as of the close of business on the Expiration Date.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement, dated as of January 12, 2000 (as thereafter amended, modified or supplemented, the "Warrant Agreement"), among the Company and ING (U.S.) Capital, LLC, and is subject to the terms and provisions contained in the Warrant Agreement and in the Note Purchase Agreement (each such term is defined in the Warrant Agreement), to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof, which applicable terms and provisions are hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement and the Note Purchase Agreement for a full statement of the respective rights, limitations of rights, duties and obligations thereunder of the Company and the Holders of the Warrants.

The number of shares of Common Stock issuable upon the exercise of each Warrant is subject to adjustment as provided in the Warrant Agreement.

All shares of Common Stock issuable by the Company upon the exercise of Warrants shall, upon such issue and upon payment of the Exercise Price in accordance with the terms set forth in the Warrant Agreement, be duly and validly issued and fully paid and non-assessable.

In order to exercise a Warrant, the Holder hereof must surrender this Warrant Certificate at the office of the Company, with the Form of Election to Purchase attached hereto appropriately completed and duly executed by the Holder hereof, all subject to the terms and conditions hereof and of the Warrant Agreement.

All terms used in this Warrant Certificate that are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement.

Copies of the Warrant Agreement are on file at the office of the Company and may be obtained by writing to the Company at MCM Capital Group, Inc., 4302 East Broadway, Phoenix, Arizona 85042, Attention: Secretary.

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IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be executed by its officers thereunto duly authorized as of the date first written above.

MCM CAPITAL GROUP, INC.

By: _____
Name:
Title:

FORM OF ELECTION TO PURCHASE

(To Be Executed by the Holder to Exercise Warrants Evidenced by the Foregoing Warrant Certificate)

To: MCM Capital Group, Inc.

The undersigned hereby irrevocably elects to exercise the Warrants evidenced by the foregoing Warrant Certificate for, and to acquire thereunder, one full share (subject to adjustment) of Common Stock issuable upon exercise of each such Warrant, all on the terms and conditions specified in the within Warrant Certificate and the Warrant Agreement therein referred to. The undersigned hereby surrenders this Warrant Certificate and all right, title and interest therein to the Company and directs that the shares of Common Stock deliverable upon the exercise of such Warrants be registered or placed in the name of the undersigned at the address specified below and delivered thereto.

Address: _____

_____

_____
(Include Zip Code)

Name of Holder: _____
(Please Print)

By: _____
(Signature)*

(Name:)_____

(Title:)_____

Dated: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned Holder of the foregoing Warrant Certificate hereby sells, assigns and transfers(1) unto each assignee set forth below (including the undersigned with respect to any Warrants constituting a part of the Warrants evidenced by the foregoing Warrant Certificate not being assigned hereby) all of the rights of the undersigned in and to the number of Warrants (as defined in and evidenced by the foregoing Warrant Certificate) set forth opposite the name of such assignee below and in and to the foregoing Warrant Certificate with respect to said Warrants and the shares of Common Stock issuable upon exercise of said Warrants:

Name of Assignee: _____

(Please Print)

Address: _____

_____

_____
(Include Zip Code)

Number of Warrants: _____

and does hereby irrevocably constitute and appoint the Company the undersigned's attorney-in-fact to make such transfer on the books of the Company maintained for that purpose, with full power of substitution in the premises.

_____

(1) THE SECURITIES EVIDENCED BY THE FOREGOING WARRANT CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN THE WARRANT AGREEMENT AND THE NOTE PURCHASE AGREEMENT, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPILED WITH.

If the total number of Warrants transferred shall not be all the Warrants evidenced by the foregoing Warrant Certificate, the undersigned requests that a new Warrant Certificate evidencing the Warrants not so assigned be issued in the name of and delivered to the undersigned.

Dated: _____

Name of Holder: _____

(Please Print)

_____

(Signature)*

(Name:) _____

(Title:) _____

EXHIBIT 10.3

WARRANT AGREEMENT

dated as of January 12, 2000

between

MCM CAPITAL GROUP, INC.

and

TRIARC COMPANIES, INC.

for

Warrants to Purchase

100,000 shares of Common Stock

WARRANT AGREEMENT

This WARRANT AGREEMENT, dated as of January 12, 2000 (this "Agreement") is entered into by and between MCM Capital Group, Inc., a Delaware corporation (the "Company"), and Triarc Companies, Inc., a Delaware corporation ("Triarc").

W I T N E S S E T H:

WHEREAS, the Company is a party with ING (U.S.) Capital LLC (the "Purchaser") to that certain Note Purchase Agreement, dated as of January 12, 2000 (the "Note Purchase Agreement"), pursuant to which the Company has agreed to issue and sell to the Purchaser, and the Purchaser has agreed to purchase, certain securities of the Company;

WHEREAS, Triarc and the Purchaser have entered into that certain Guaranty and Option Agreement, dated as of January 12, 2000 (the "Guaranty"), pursuant to which Triarc has agreed, on the terms and subject to the limitations set forth therein, to guarantee certain obligations of the Company under the Series No. 1 Notes (as defined herein); and

WHEREAS, in order to induce Triarc to enter into the Guaranty, and as partial consideration therefor, the Company has agreed to issue to Triarc warrants which, subject to the adjustments provided herein, entitle Triarc to purchase 100,000 shares of common stock, $0.01 par value per share, of the Company (the "Common Stock").

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. CERTAIN DEFINED TERMS. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the respective meanings specified below :

"Additional Notes" shall mean up to $40,000,000 in aggregate principal amount of notes issued by the Company subsequent to the Closing Date pursuant to Section 6.2.2(b) of the Note Purchase Agreement.

"Additional Warrants" shall mean warrants, options or similar rights to purchase Common Stock on terms and conditions, and in a form, substantially similar to the Purchaser Warrants, which are issued to the purchasers of Additional Notes in connection with the sale of such Additional Notes by the Company and the purchase thereof by such purchaser.

"Affiliate" shall have the meaning specified in the Note Purchase Agreement.

"Agreement" or "this Agreement" shall have the meaning specified in the preamble to this Agreement.

"Board" shall mean the board of directors of the Company.

"Closing Date" shall have the meaning specified in the Note Purchase Agreement.

"Common Stock" shall have the meaning specified in the recitals to this Agreement.

"Company" shall have the meaning specified in the preamble to this Agreement.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"Exercise Price" shall have the meaning specified in Section 3.01.

"Expiration Date" shall be January 12, 2005.

"Fair Market Value" shall mean, with respect to any shares of Common Stock as of any date of determination, (i) if such shares of Common Stock are not Publicly Traded, the fair value of such shares of Common Stock (A) as determined reasonably and in good faith in the most recently completed arm's-length transaction between the Company and an unaffiliated third party in which such determination is necessary and the closing of which shall have occurred within the six months preceding such date of determination, or (B) if no such transaction shall have occurred within such six-month period, as determined in accordance with the Valuation Criteria reasonably and in good faith by an Independent Financial Expert appointed by the Board and consented to by Triarc (such consent not to be unreasonably withheld); or (ii) if such shares of Common Stock are Publicly Traded, the Market Price of such shares of Common Stock on the trading day immediately preceding such date of determination; provided, however, that with respect to shares of Common Stock issuable upon the exercise of options under a stock option plan or the issuance of shares of Common Stock under an employee stock incentive plan, the Fair Market Value of such shares shall be determined in accordance with the applicable provisions of such plan (if any).

"Holders" shall mean the registered holders from time to time of the Warrants and, unless otherwise provided or indicated herein, the registered holders from time to time of the Underlying Common Stock.

"Independent Financial Expert" shall mean a nationally recognized investment banking firm (i) that does not (and whose directors, officers, employees and affiliates do not) have a direct or indirect financial interest in the Company or any of its Affiliates, and (ii) that is not, and none of whose directors, officer, employees or Affiliates are, at the time it is called upon to render independent financial advice to the Company, a promoter, director or officer of the Company or any of its Affiliates or an underwriter or placement agent with respect to any of the

securities of the Company or any of its Affiliates, nor have the Company or any such directors, officers, employees or Affiliates acted in such capacity during the three year period prior thereto.

"Market Price" shall mean, with respect to any shares of Common Stock that are Publicly Traded, for any specified trading day, (i) in the case of shares of Common Stock listed or admitted to trading on any securities exchange or on the Nasdaq National Market or the Nasdaq SmallCap Market, the average closing price, or if no sale takes place on a particular day, the average of the closing bid and asked prices on such day, for the ten (10) trading days prior to the date in question, (ii) in the case of shares of Common Stock not then listed or admitted to trading on any securities exchange or on the Nasdaq National Market or the Nasdaq SmallCap Market, the average last reported sale price, or if no sale takes place on a particular day, the average of the closing bid and asked prices on such day, for the ten (10) trading days prior to the date in question, as reported by a reputable quotation source designated by the Company, and (iii) if there are no bid and asked prices reported during the ten (10) trading days prior to the specified date, the Fair Market Value of such shares of Common Stock as determined as if such shares of Common Stock were not Publicly Traded.

"Note Purchase Agreement" shall have the meaning specified in the recitals to this Agreement.

"Person" shall mean any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization or other entity or any government or political subdivision, agency or instrumentality thereof, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

"Publicly Traded" shall mean, relative to any security, that such security is (i) listed on a domestic securities exchange, (ii) quoted on the Nasdaq National Market or the Nasdaq SmallCap Market, or (iii) traded in the domestic over-the-counter market, which trades are reported on the OTC Electronic Bulletin Board or reported by the National Quotation Bureau, Incorporated.

"Purchaser" shall have the meaning specified in the recitals to this Agreement.

"Purchaser Warrants" shall mean the warrants issued to the Purchaser on the Closing Date as contemplated by the Note Purchase Agreement and that certain Warrant Agreement, dated as of January 12, 2000, by and between the Company and the Purchaser, which warrants initially entitle the Purchaser to purchase 428,571 shares of Common Stock.

"Rights" shall mean any "poison pill" or similar shareholder rights issued pursuant to a "poison pill" shareholder rights plan or similar plan.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations thereunder.

"Series No. 1 Note" shall have the meaning specified in the Note Purchase Agreement.

"Taxes" shall mean all transfer, stamp, documentary and other similar taxes, assessments or charges levied by any governmental or revenue authority in respect hereof in respect of any Warrant or any Warrant Certificate, excluding, however, franchise taxes and taxes, assessments or charges levied or imposed on or measured by the net income or receipts of any Person.

"Triarc" shall have the meaning specified in the preamble to this Agreement.

"Underlying Common Stock" shall mean the shares of Common Stock issuable or issued upon the exercise of the Warrants.

"Valuation Criteria" shall mean one or more valuation methods that the Independent Financial Expert or the Board, as the case may be, in its professional or reasonable business judgment, as the case may be, determines to be most appropriate for use in determining the Fair Market Value of any securities for which such determination is required pursuant to this Agreement.

"Warrant Certificates" shall have the meaning specified in Section 2.01 of this Agreement.

"Warrants" shall mean the warrants issued to Triarc on the Closing Date as contemplated by this Agreement and the Note Purchase Agreement, which warrants initially entitle Triarc to purchase 100,000 shares of Common Stock.

ARTICLE II
ORIGINAL ISSUE OF WARRANTS; TRANSFER

Section 2.01. FORM OF WARRANT CERTIFICATES. The Warrants shall be evidenced by certificates in registered form only and substantially in the form attached hereto as Exhibit A (the "Warrant Certificates"), shall be dated the date on which signed by the Company and may have such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law or with any rule or regulation applicable thereto, with any rule or regulation of any securities exchange or association on which the Warrants may be listed, or to conform to customary usage.

Section 2.02. EXECUTION AND DELIVERY OF WARRANT CERTIFICATES. Warrant Certificates evidencing the Warrants shall be executed by the Company and delivered on the Closing Date to Triarc. The Warrant Certificates shall be executed on behalf of the Company by one or more duly authorized officers of the Company.

Section 2.03. TRANSFER OF WARRANTS.

(a) Subject to clause (b) of this Section 2.03 and provided that all conditions to transfer set forth in this Agreement have been satisfied, each Warrant and the rights thereunder may be transferred by the Holder thereof delivering to the Company the Warrant Certificate evidencing such Warrant accompanied by a properly completed assignment form (a form of

which is attached to the form of Warrant Certificate attached as Exhibit A to this Agreement). Within ten (10) Business Days of receipt of such assignment form, the Company shall issue and deliver to the transferee, subject to clause (b) below, a Warrant Certificate of like kind and tenor representing the transferred Warrants and to the transferor a Warrant Certificate of like kind and tenor representing any Warrants evidenced by such original certificate that are not being transferred. Each Warrant Certificate issued pursuant to this Section 2.03 shall be substantially in the form of Exhibit A to this Agreement and shall bear the restrictive legends set forth thereon (unless, with respect to the legend regarding transfer under applicable securities laws, the Holder or transferee thereof supplies to the Company an opinion of counsel, reasonably satisfactory to the Company, that the restrictions described in such legend are no longer applicable to such Warrants).

(b) The transfer of Warrants shall be permitted only pursuant to a transaction that complies with, or is exempt from, the provisions of the Securities Act and any applicable provisions of state securities laws, and the Company may require an opinion of counsel, reasonably satisfactory to the Company, to such effect prior to the transfer of any Warrant.

ARTICLE III
EXERCISE PRICE; EXERCISE OF WARRANTS GENERALLY

Section 3.01. EXERCISE PRICE. Each Warrant Certificate shall entitle the Holder thereof, subject to the provisions of the Agreement, to purchase one share of Common Stock for each Warrant represented thereby at an exercise price (the "Exercise Price") of $0.01 per share.

Section 3.02. EXERCISE OF WARRANTS. Subject to the terms and conditions set forth herein, the Warrants shall be exercisable at any time from the date of issuance through the Expiration Date.

Section 3.03. EXPIRATION OF WARRANTS. The Warrants shall terminate and become void as of the close of business on the Expiration Date.

Section 3.04. METHOD OF EXERCISE.

(a) In order to exercise a Warrant, the Holder thereof must surrender the Warrant Certificate evidencing such Warrant to the Company, with one of the forms on the reverse of or attached to the Warrant Certificate duly executed, and by paying in full to the Company (i) by wire transfer of immediately available funds, or (ii) by certified or official bank check, or (iii) by any combination of the foregoing, the Exercise Price for each share of Underlying Common Stock as to which Warrants are then being exercised. A Holder may exercise such Holder's Warrant for the full number of shares of Underlying Common Stock issuable upon exercise thereof (subject to the limitations set forth in Section 3.02) or any lesser number of whole shares of Underlying Common Stock.

(b) Not later than the fifth Business Day following the later of (i) surrender of a Warrant Certificate in conformity with the foregoing provisions or (ii) payment by the Holder of the full Exercise Price for the shares of Underlying Common Stock as to which such Warrants

are then being exercised, the Company shall transfer to the Holder of such Warrant Certificate appropriate evidence of ownership of any shares of Underlying Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, such name or names as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the person or persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 4.04. If such Warrant Certificate shall not have been exercised in full, the Company will issue to such Holder a new Warrant Certificate exercisable for the number of shares of Underlying Common Stock as to which such Warrant shall not have been exercised. Any registration of Underlying Common Stock issued upon exercise of a Warrant in the name of any person other than the registered holder of the Warrant shall be subject to Sections 5.03 and 5.04 of this Agreement.

(c) Each person in whose name any certificate representing shares of Underlying Common Stock is issued shall for all purposes be deemed to have become the holder of record of such shares of Underlying Common Stock on the date on which the Warrant Certificate was surrendered to the Company and payment of the Exercise Price therefor, irrespective of the date of delivery of such certificate representing shares of Underlying Common Stock.

Section 3.05. CANCELLATION OF WARRANTS. The Company shall cancel any Warrant Certificate delivered to it for exercise, in whole or in part, or delivered to it for transfer, exchange or substitution, and no Warrant Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall destroy canceled Warrant Certificates. If the Company shall acquire any of the Warrants, such acquisition shall not operate as a redemption or termination of the right represented by such Warrants unless and until the Warrant Certificates evidencing such Warrants are surrendered to the Company for cancellation.

ARTICLE IV
ADJUSTMENTS

Section 4.01. ADJUSTMENTS. The number of shares of Common Stock issuable upon exercise of each Warrant shall be subject to adjustment from time to time as follows:

(a) Stock Dividends; Stock Splits; Reverse Stock Splits; Reclassifications. In the event that the Company shall (i) pay a dividend or make any other distribution with respect to its Common Stock in shares of its capital stock, (ii) subdivide its outstanding Common Stock, (iii) combine its outstanding Common Stock into a smaller number of shares, or (iv) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a merger, consolidation or other business combination in which the Company is the continuing corporation), the number of shares of Common Stock issuable upon exercise of each Warrant immediately prior to the record date for such dividend or distribution, or the effective date of such subdivision or combination, shall be adjusted so that the Holder of each Warrant shall thereafter be entitled to receive the kind and number of shares of Common Stock or other securities of the Company that such Holder would have owned or have

been entitled to receive after the happening of any of the events described above, had such Warrant been exercised immediately prior to the happening of such event or any record date with respect thereto. An adjustment made pursuant to this Section 4.01(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) Issuance of Common Stock, Rights, Options or Warrants at Lower Values.

(i) In the event that the Company shall issue or sell shares of Common Stock, or rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock, at a price per share of Common Stock (determined in the case of such rights, options, warrants or convertible or exchangeable securities, by dividing (x) the total amount of Consideration receivable by the Company in respect of the issuance and sale of such rights, options, warrants or convertible or exchangeable securities, plus the total Consideration, if any, payable to the Company upon exercise, conversion or exchange thereof, by (y) the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities) that is lower than the then Fair Market Value per share of the Common Stock immediately prior to such sale or issuance, then the number of shares of Common Stock thereafter issuable upon the exercise of each Warrant then outstanding shall equal the Pre-Issuance Value per Warrant divided by the Unadjusted Post-Issuance Value per Warrant. Such adjustment shall be made successively whenever any such sale or issuance is made.

(ii) For purposes of this Section 4.01(b), (A) "Pre-Issuance Value per Warrant" shall mean (1) the total number of shares of Common Stock then issuable upon exercise of each Warrant, multiplied by (2) the Fair Market Value per share of Common Stock immediately prior to any issuance or sale described in Section 4.01(b)(i); and (B) "Unadjusted Post-Issuance Value per Warrant" shall mean (1) the sum of (x) the total number of shares of Common Stock (including shares of Common Stock issuable upon exercise of outstanding Warrants and Additional Warrants) outstanding immediately prior to any issuance or sale described in Section 4.01(b)(i), multiplied by the Fair Market Value per share of Common Stock immediately prior to such issuance or sale, plus (y) the total number of additional shares of Common Stock issued or sold by the Company (including, in the case of rights, options, warrants or convertible or exchangeable securities, the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities), multiplied by the price per share of Common Stock for which such additional shares of Common Stock were issued or sold (including, in the case of rights, options, warrants or convertible or exchangeable securities, the total amount of Consideration per share receivable by the Company in respect of the issuance and sale of such rights, options, warrants or convertible or exchangeable securities, plus the total Consideration per share, if any, payable to the Company upon exercise, conversion or exchange thereof), divided by (2) the total number of shares of Common Stock outstanding immediately after such issuance or sale (including, in the case of rights, options, warrants or convertible or exchangeable securities, the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities and including shares of Common Stock issuable upon exercise of outstanding Warrants and Additional Warrants).

(iii) In the event that the Company shall issue and sell shares of Common Stock or rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock for consideration consisting, in whole or in part, of property other than cash or its equivalent, then in determining the "price per share of Common Stock" and the "Consideration" receivable by or payable to the Company for purposes of this Section 4.01, the Board shall determine, in good faith, the fair value of such property. In the event that the Company shall issue and sell rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock, together with one or more other securities as part of a unit at a price per unit, then in determining the "price per share of Common Stock" and the "Consideration" receivable by or payable to the Company for purposes of this Section 4.01, the Board shall determine, in good faith, the fair value of the rights, options, warrants or convertible or exchangeable securities then being sold as part of such unit.

(iv) Any adjustment to the number of shares of Common Stock issuable upon exercise of all Warrants then outstanding made pursuant to this Section 4.01(b) shall be allocated among each Warrant then outstanding on a pro rata basis.

(v) Notwithstanding anything herein to the contrary, the provisions of this Section 4.01(b) shall not apply to any of the following:

(A) the grant or issuance of restricted stock, options or other similar rights issued pursuant to employee stock option plans, directors stock option plans or similar plans providing for options or other similar rights to purchase Common Stock covering in the aggregate not in excess of 20% of the fully-diluted shares of Common Stock issued and outstanding from time to time, or the issuance of shares upon exercise of any such options or other similar rights,

(B) the issuance of shares upon the exercise of options, warrants, convertible or exchangeable securities, or similar securities that are convertible into Common Stock in accordance with their terms, that are issued and outstanding as of the date of this Agreement (giving effect to the transactions relating to the issuance of the Series No. 1 Notes, including without limitation the issuance of the Warrants and the Purchaser Warrants),

(C) the issuance of any Additional Warrants,

(D) the issuance of any Rights,

(E) the issuance of shares of capital stock pursuant to any stock dividend, stock split or other distribution in respect of outstanding shares, and

(F) the issuance of Common Stock or securities convertible into Common Stock pursuant to an underwritten offering (including, without limitation, any such securities issued pursuant to the underwriters' overallotment option).

(c) [Reserved].

(d) Issuance of Rights. In the event that the Company shall distribute any Rights prior to the exercise or expiration of the Warrants, the Company shall make proper provision so that each Holder who exercises a Warrant after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such exercise, in addition to the shares of Common Stock issuable upon such exercise, a number of Rights determined as follows: (A) if such exercise occurs on or prior to the date fixed for the distribution to the holders of Rights of separate securities evidencing such Rights, the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of shares of Underlying Common Stock issuable upon such exercise would have been entitled at the time of such exercise in accordance with the terms and provisions applicable to the Rights, and (B) if such exercise occurs after such distribution date, the same number of Rights to which a holder of the number of shares of Underlying Common Stock into which the Warrant so exercised was exercisable immediately prior to such distribution date would have been entitled on the distribution date in accordance with the terms and provisions applicable to the Rights.

(e) Expiration Of Rights, Options and Conversion Privileges. Upon the expiration of any rights, options, warrants or conversion or exchange privileges that have previously resulted in an adjustment pursuant to Section 4.01(b), if any thereof shall not have been exercised, the number of shares of Common Stock issuable upon the exercise of each Warrant shall, upon such expiration, be readjusted and shall thereafter, upon any future exercise, be such as they would have been had they been originally adjusted (or had the original adjustment not been required, as the case may be) as if (i) the only shares of Common Stock so issued were the shares of Common Stock, if any, actually issued or sold upon the exercise of such rights, options, warrants or conversion or exchange rights and (ii) such shares of Common Stock, if any, were issued or sold for the Consideration actually received by the Company upon such exercise plus the Consideration, if any, actually received by the Company for issuance, sale or grant of all such rights, options, warrants or conversion or exchange rights whether or not exercised.

(f) De Minimis Adjustments. No adjustment in the number of shares of Common Stock issuable hereunder shall be required unless such adjustment would require an increase or decrease of at least one percent in the number of share of Common Stock purchasable upon an exercise of each Warrant; provided, however, that any adjustments which by reason of this Section 4.01(f) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest one-tenth of a share.

Section 4.02. DETERMINATION OF ADJUSTMENT. Whenever the number of shares of Common Stock issuable upon the exercise of each Warrant is adjusted as herein provided, a certificate of an officer of the Company setting forth the number of shares of Common Stock issuable upon the exercise of each Warrant after such adjustment, setting forth a brief statement of the facts requiring such adjustment and setting forth the computation by which such adjustment was made (in reasonable detail), shall, absent demonstrable error, be conclusive evidence of such adjustment. The Company shall be entitled to rely on such certificate and shall exhibit the same from time to time to any Holder desiring an inspection thereof during normal business hours.

Section 4.03. STATEMENT ON WARRANTS. Irrespective of any adjustment in the number or kind of shares issuable upon the exercise of the Warrants, certificates evidencing Warrants theretofore or thereafter issued may continue to express the same price and number and kind of shares as are stated in the Warrants initially issuable pursuant to this Agreement.

Section 4.04. FRACTIONAL INTEREST. The Company shall not be required to issue fractional shares of Common Stock on the exercise of Warrants. If more than one Warrant shall be presented for exercise in full at the same time by the same Holder, the number of full shares of Common Stock which shall be issuable upon such exercise thereof shall be computed on the basis of the aggregate number of shares of Common Stock acquirable on exercise of the Warrants so presented. If any fraction of a share of Common Stock would, except for the provisions of this Section 4.04, be issuable on the exercise of any Warrant (or specified portion thereof), the Company shall pay an amount in cash calculated by it to be equal to the then Fair Market Value per share of Common Stock multiplied by such fraction computed to the nearest whole cent.

ARTICLE V
ADDITIONAL AGREEMENTS

Section 5.01. WARRANT TRANSFER BOOKS.

(a) The Warrant Certificates shall be issued in registered form only. The Company shall keep at its executive office a register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Warrant Certificates and of transfers or exchanges of Warrant Certificates as herein provided.

(b) Every Warrant Certificate surrendered for registration of transfer or exchange shall (if so required by the Company) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, duly executed by the Holder thereof or his attorney duly authorized in writing.

Section 5.02. NO STOCK RIGHTS. Prior to the exercise of the Warrants, no holder of a Warrant Certificate, as such, shall be entitled to vote or be deemed the holder of Common Stock or any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained herein be construed to confer upon any holder of a Warrant Certificate, as such, the rights of a stockholder of the Company or the right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, to exercise any preemptive right, to receive notice of meetings or other actions affecting stockholders (except as specifically provided herein), or to receive dividends or subscription rights or otherwise.

Section 5.03. RESTRICTIONS ON TRANSFER. The Holder of any Warrant Certificate, by acceptance thereof, acknowledges and agrees that without limitation of the obligations set forth in Section 5.07, it shall be a condition precedent to any transfer of the

Warrant that each proposed transferee execute and deliver to the Company the documentation required by such Section 5.07.

Section 5.04. NO REGISTRATION OF WARRANTS OR UNDERLYING COMMON STOCK UNDER SECURITIES LAWS; OTHER REGULATORY FILINGS.

(a) Neither the Warrants nor the Underlying Common Stock have been registered under the Securities Act or any state securities laws.

(b) The Holder of any Warrant Certificate, by acceptance thereof, represents that it is acquiring the Warrants to be issued to it for its own account and not with a view to the distribution thereof, and agrees not to sell, transfer, pledge or hypothecate any Warrants or any Underlying Common Stock unless (i) such transfer is made in connection with an effective registration statement under the Securities Act and any applicable state securities laws or (ii) the Holder thereof has furnished the Company a satisfactory opinion of counsel for such Holder to the effect that such transaction is exempt from the registration requirements of the Securities Act, the rules and regulations in effect thereunder and any applicable state securities laws.

(c) Each Holder of Warrants also hereby acknowledges that any exercise of the Warrants may be subject to the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and agrees to make any such required filings prior to any such exercise.

Section 5.05. RESERVATION OF COMMON STOCK FOR ISSUANCE ON EXERCISE OF WARRANTS. The Company shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of issue upon exercise of Warrants as herein provided, such number of shares of Common Stock as shall then be issuable upon the exercise of all outstanding Warrants. All shares of Common Stock which shall be so issuable shall, upon such issue and upon payment of the exercise price therefor as provided herein and in the applicable Warrant Certificate, be duly and validly issued and fully paid and non-assessable.

Section 5.06. PAYMENT OF TAXES. The Company shall pay all Taxes that may be imposed on the Company or on the Warrants or on any securities deliverable upon exercise of Warrants with respect thereto. The Company shall not be required, however, to pay any Taxes or other charges imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock or other securities underlying the Warrants or payment of cash to any person other than the Holder of a Warrant Certificate surrendered upon the exercise or purchase of a Warrant.

Section 5.07. CERTAIN PERSONS TO EXECUTE AGREEMENT. Without in any way limiting any transfer restrictions contained elsewhere herein, no Holder shall sell or otherwise transfer any Warrants held by such Holder, unless, prior to the consummation of any such sale or other disposition, the person to whom such sale or other disposition is proposed to be made executes and delivers to the Company an agreement, in form and substance satisfactory to the Company, whereby such prospective transferee confirms that, with respect to the Warrants

that are the subject of such sale or other disposition, it shall be deemed to be a "Holder" for the purposes of this Agreement and agrees to be bound by all the terms of this Agreement. Upon the execution and delivery by such prospective transferee of the agreement referred to in the next preceding sentence, and subject to all applicable transfer restrictions, such prospective transferee shall be deemed a "Holder" for the purposes of this Agreement, and shall have the rights and be subject to the obligations of a Holder hereunder with respect to the Warrants held by such prospective transferee.

ARTICLE VI
MISCELLANEOUS

Section 6.01. EXPENSES. Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 6.02. NOTICES. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, or by courier service, cable, telecopy, telegram, or registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at their addresses set forth on the signature pages to this Agreement (or at such other address for a party hereto as shall be specified in a notice given in accordance with this Section 6.02).

Section 6.03. HEADINGS. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning, construction or interpretation of this Agreement.

Section 6.04. SEVERABILITY. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 6.05. MUTILATED OR MISSING WARRANT CERTIFICATES. If any Warrant Certificate is lost, stolen, mutilated or destroyed, the Company in its discretion may issue, in exchange and substitution for and upon cancellation of the mutilated Warrant Certificate, or in lieu of and substitution for the Warrant Certificate lost, stolen or destroyed, and upon receipt of a proper affidavit or other evidence satisfactory to the Company (and surrender of any mutilated Warrant Certificate) and bond of indemnity in form and amount and with corporate surety satisfactory to the Company in each instance protecting the Company, a new Warrant Certificate of like tenor and exercisable for an equivalent number of shares of Common

Stock as the Warrant Certificate so lost, stolen, mutilated or destroyed. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate at any time shall be enforceable by anyone. An applicant for such a substitute Warrant Certificate also shall comply with such other reasonable regulations and pay such other reasonable charges as the Company may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement of lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement of negotiable instruments or other securities without their surrender.

Section 6.06. ENTIRE AGREEMENT. This Agreement and the documents referred to herein constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, between or among the parties with respect to the subject matter hereof.

Section 6.07. NO THIRD PARTY BENEFICIARIES. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, whether express or implied, is intended to or shall confer upon any person other than the parties hereto and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 6.08. AMENDMENT; WAIVER. This Agreement may not be amended, modified, supplemented or waived except by an instrument in writing signed by, or on behalf of, the Company and holders of more than 50% of the outstanding Warrants or, in the case of a waiver, the party to be bound thereby (which, in the case of the Holders of the Warrants, shall require Holders of more than 50% of the outstanding Warrants).

Section 6.09. GOVERNING LAW. IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS OF EACH PARTY ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED IN AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICT OF LAWS.

Section 6.10. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 6.11. [Reserved]

Section 6.12. SPECIFIC PERFORMANCE. Each Holder shall have the right to specific performance by the Company of the provisions of this Agreement, in addition to any other

remedies that it may have at law or in equity. The Company hereby irrevocably waives, to the extent that it may do so under applicable law, any defense based on the adequacy of a remedy at law which may be asserted as a bar to the remedy of specific performance in any action brought against the Company for specific performance of this Agreement by the Holders of the Warrants or the Underlying Common Stock.

Section 6.13. FILINGS. The Company shall, at its own expense and to the extent it is reasonably able to do so, promptly execute and deliver, or cause to be executed and delivered, to any Holder of Warrants all applications, certificates, instruments and other documents that such Holder may reasonably request in connection with the obtaining of any consent, approval, qualification or authorization of any Federal, state or local government (or any agency or commission thereof) necessary or appropriate in connection with, or for the effective exercise of, any Warrants then held by such Holder, in each case subject to such confidentiality obligations as the Company may reasonably impose on such Holder; provided, however, that the Company shall not be required to qualify to do business in, or provide a general consent to service of process in, any jurisdiction in which it is not already qualified to do business and shall not be required to register the Warrants or the Underlying Common Stock under any federal or state securities laws except as otherwise required under any registration rights agreement (or similar agreement) to which the Company may be a party from time to time.

Section 6.14. OTHER TRANSACTIONS. Nothing contained herein shall preclude the Holder from engaging in any transaction, in addition to those contemplated by this Agreement, with the Company or any of its Affiliates in which the Company or such Affiliate is not restricted hereby from engaging with any other Person.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date fast above written.

MCM CAPITAL GROUP, INC.

By: /S/ Gregory G. Meredith

Name: Gregory G. Meredith
Title: Secretary

TRIARC COMPANIES, INC.

By: /s/ John L. Barnes, Jr.

Name: John L. Barnes, Jr.
Title: Executive Vice President

EXHIBIT A

[FORM OF WARRANT CERTIFICATE]

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF, AND NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER, UNLESS (i) SUCH TRANSFER IS MADE IN CONNECTION WITH AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (ii) THE COMPANY HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER HEREOF THAT SUCH TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT, THE RULES AND REGISTRATIONS IN EFFECT THEREUNDER AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SECURITIES EVIDENCED BY THIS CERTIFICATE AND THE SECURITIES ISSUABLE UPON THE EXERCISE OF THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN A WARRANT AGREEMENT, DATED AS OF JANUARY 12, 2000, AS THEREAFTER AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH.

MCM CAPITAL GROUP, INC.

WARRANT CERTIFICATE

Dated as of ---------,-------

WARRANTS TO PURCHASE -------SHARES OF COMMON STOCK

Certificate No.----
Number of Warrants:----------

MCM CAPITAL GROUP, INC., a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies that, for value received, TRIARC COMPANIES, INC., or its registered assigns, is the registered holder of the number of Warrants set forth above (the "Warrants"). Each Warrant shall entitle the registered holder thereof (the "Holder"), during the time periods specified below and subject to the provisions contained herein and in the Warrant

Agreement (as defined below), to receive from the Company one share of Common Stock, par value $0.01 per share, of the Company ("Common Stock"), subject to adjustment upon the occurrence of certain events as more fully described in the Warrant Agreement, at an exercise price of $0.01 per share. The Warrants shall be exercisable beginning on the date of issuance through January 12, 2005 (the "Expiration Date"). This Warrant Certificate shall terminate and become void as of the close of business on the Expiration Date.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement, dated as of January 12, 2000 (as thereafter amended, modified or supplemented, the "Warrant Agreement"), among the Company and Triarc Companies, Inc., and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof, which applicable terms and provisions are hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full statement of the respective rights, limitations of rights, duties and obligations thereunder of the Company and the Holders of the Warrants.

The number of shares of Common Stock issuable upon the exercise of each Warrant is subject to adjustment as provided in the Warrant Agreement.

All shares of Common Stock issuable by the Company upon the exercise of Warrants shall, upon such issue and upon payment of the Exercise Price in accordance with the terms set forth in the Warrant Agreement, be duly and validly issued and fully paid and non-assessable.

In order to exercise a Warrant, the Holder hereof must surrender this Warrant Certificate at the office of the Company, with the Form of Election to Purchase attached hereto appropriately completed and duly executed by the Holder hereof, all subject to the terms and conditions hereof and of the Warrant Agreement.

All terms used in this Warrant Certificate that are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement.

Copies of the Warrant Agreement are on file at the office of the Company and may be obtained by writing to the Company at MCM Capital Group, Inc., 4302 East Broadway, Phoenix, Arizona 85042, Attention: Secretary.

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IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be executed by its officers thereunto duly authorized as of the date first written above.

MCM CAPITAL GROUP, INC.

By:

Name:
Title:

FORM OF ELECTION TO PURCHASE

(To Be Executed by the Holder to Exercise Warrants Evidenced by the Foregoing Warrant Certificate)

To: MCM Capital Group, Inc.

The undersigned hereby irrevocably elects to exercise the Warrants evidenced by the foregoing Warrant Certificate for, and to acquire thereunder, one full share (subject to adjustment) of Common Stock issuable upon exercise of each such Warrant, all on the terms and conditions specified in the within Warrant Certificate and the Warrant Agreement therein referred to. The undersigned hereby surrenders this Warrant Certificate and all right, title and interest therein to the Company and directs that the shares of Common Stock deliverable upon the exercise of such Warrants be registered or placed in the name of the undersigned at the address specified below and delivered thereto.

Address: ----------
---------- (Include Zip Code)

Name of Holder:---------- (Please Print)

By: ---------- (Signature)*

(Name:)----------

(Title:)----------

Dated:----------

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned Holder of the foregoing Warrant Certificate hereby sells, assigns and transfers(1) unto each assignee set forth below (including the undersigned with respect to any Warrants constituting a part of the Warrants evidenced by the foregoing Warrant Certificate not being assigned hereby) all of the rights of the undersigned in and to the number of Warrants (as defined in and evidenced by the foregoing Warrant Certificate) set forth opposite the name of such assignee below and in and to the foregoing Warrant Certificate with respect to said Warrants and the shares of Common Stock issuable upon exercise of said Warrants:

Name of Assignee: ----------
(Please Print)

Address: ----------

(Include Zip Code)

Number of Warrants: ----------

and does hereby irrevocably constitute and appoint the Company the undersigned's attorney-in-fact to make such transfer on the books of the Company maintained for that purpose, with full power of substitution in the premises.

- ----------

(1) THE SECURITIES EVIDENCED BY THE FOREGOING WARRANT CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN THE WARRANT AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPILED WITH.

If the total number of Warrants transferred shall not be all the Warrants evidenced by the foregoing Warrant Certificate, the undersigned requests that a new Warrant Certificate evidencing the Warrants not so assigned be issued in the name of and delivered to the undersigned.

Dated: ----------

Name of Holder: ----------
(Please Print)

(Signature)*

(Name:)----------

(Title:)----------

EXHIBIT 10.4

REGISTRATION RIGHTS AGREEMENT

MCM CAPITAL GROUP, INC.

Dated as of January 12, 2000

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT") is dated as of the 12th day of January, 2000 by and among MCM Capital Group, Inc., a Delaware corporation (the "COMPANY"), and ING (U.S.) Capital LLC (together with its Affiliated Stockholders (as herein defined), if any, "ING"). Capitalized terms used but not otherwise defined herein have their respective meanings set forth in Section 11.

WHEREAS, ING has entered into a Note Purchase Agreement, dated as of January 12, 2000 (the "NOTE PURCHASE AGREEMENT"), with the Company pursuant to which ING agreed to purchase from Company certain securities, on the terms and subject to the conditions therein set forth;

WHEREAS, it is a condition of the consummation of the transactions contemplated by the Note Purchase Agreement that the Company and ING enter into this Agreement for the purpose of providing for certain registration rights for the benefit of holders of Registrable Securities (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

1. Registrations Upon Request.

1.1. Requests by Stockholders. At any time during which the Company is qualified at all relevant times to use Form S-3 (or any other comparable form hereinafter adopted) for the registration under the Securities Act of the Registrable Securities, ING shall have the right to make requests that the Company effect up to two separate registrations under the Securities Act of all or part of the Registrable Securities owned by it; provided that at any time when ING owns fewer Registrable Securities than its Permitted Transferees, such right of ING to request up to two registrations will be exercisable by those entities owning individually or in the aggregate in excess of 50% of the outstanding Registrable Securities then owned by ING and its Permitted Transferees. A request made by ING and/or its Permitted Transferees pursuant to the immediately preceding sentence (in either case, the "REQUESTING PARTY") shall not be counted for purposes of the request limitations set forth above if (a) the Requesting Party determines in its good faith judgment to withdraw the proposed registration of any Registrable Securities requested to be registered pursuant to this Section 1.1 due to marketing or regulatory reasons, (b) the registration statement relating to any such request is not declared effective within 90 days of the date such registration statement is first filed with the Commission and the Requesting Party determines to withdraw the proposed registration, (c) within 180 days after the registration relating to any such request has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason and the Company fails to have such stop order, injunction or other order or requirement removed, withdrawn or resolved to the Requesting Party's reasonable satisfaction within 30 days, (d) more than 50% of the Registrable Securities requested by the Requesting Party to be included in the registration are not so included pursuant to Section 1.4, (e) the

conditions to closing specified in the underwriting agreement or purchase agreement entered into in connection with the registration relating to any such request are not satisfied (other than as a result of a default or breach thereunder by the Requesting Party), or (f) the registration relating to such request is preempted by a proposed Company registration, notice of which is given by the Company to the Requesting Party pursuant to Section 1.5(b)(iii) and the Requesting Party provides the Company written notice of the withdrawal of its registration request prior to a registration statement relating thereto becoming effective.

Upon any such registration request, the Company will promptly, but in any event within 10 days, give written notice of such request to all holders of Registrable Securities and thereupon the Company will, subject to Sections 1.4 and 1.5, use its best efforts to effect the prompt registration under the Securities Act of:

(i) the Registrable Securities which the Company has been so requested to register by the Requesting Party, and

(ii) all other Registrable Securities which the Company has been requested to register by the holders thereof by written request given to the Company by such holders within 10 days after the giving of such written notice by the Company to such holders,

all to the extent required to permit the disposition of the Registrable Securities so to be registered in accordance with the intended method or methods of disposition of each seller of such Registrable Securities.

1.2. Registration Statement Form. A registration requested pursuant to Section 1.1 shall be effected by the filing of a registration statement on a form reasonably acceptable to the Requesting Party, it being understood and agreed that the Company shall only be required to effect any such registration if it is, at all relevant times, qualified for registration on Form S-3 (or any other comparable form hereinafter adopted).

1.3. Expenses. The Company will pay all Registration Expenses in connection with any registration requested and effectuated under Section 1.1; provided that (a) each seller of Registrable Securities shall pay all Registration Expenses to the extent required to be paid by such seller under applicable law and all underwriting discounts and commissions and transfer taxes, if any, and (b) if, pursuant to clause (a) of Section 1.1, a Requesting Party determines in its good faith judgment to withdraw the proposed registration of any Registrable Securities requested to be registered pursuant to Section 1.1 due to marketing reasons after the filing of a registration statement with respect to such Registrable Securities, the Requesting Party shall reimburse the Company for its reasonable out-of-pocket expenses (including, without limitation, all reasonable legal and accounting fees and disbursements and printing costs) incurred in connection with the preparation and filing of such registration statement unless the Requesting Party agrees in writing to have the withdrawn registration treated as one of its two registration requests permitted pursuant to Section 1.1.

1.4. Priority in Demand Registrations. If a registration pursuant to Section 1.1 involves an underwritten offering, and the managing underwriter (or, in the case of an offering which is not underwritten, a nationally recognized investment banking firm) shall advise the

Company in writing (with a copy to each Person requesting registration of Registrable Securities) that, in its opinion, the number of securities requested and otherwise proposed to be included in such registration by all parties exceeds the number which can be sold in such offering without materially and adversely affecting the offering price or the market price of the Common Stock or would otherwise jeopardize the offering, the Company will include in such registration to the extent of the number which the Company is so advised can be sold in such offering without such material adverse effect, first, the Registrable Securities of all Stockholders (including the Requesting Party) and the securities of any other securities holder of the Company entitled to incidental registration rights with respect thereto, on a pro rata basis (based on the number of shares proposed to be registered by each such holder), and second the securities, if any, being sold by the Company, subject to the limitations of Section 7.

1.5. No Company or Other Stockholder Initiated Registration; Deferral of Registration. (a) After receipt of notice of a requested registration pursuant to Section 1.1, neither the Company nor any other Stockholder shall initiate, without the consent of the Requesting Party, a registration of any Company securities for its own account until at least 90 days after such registration has been effected or such registration has been terminated.

(b) Notwithstanding the foregoing, the Company shall have the right to delay the filing or effectiveness, but not the preparation, of a registration statement for any requested registration pursuant to Section 1.1 during one or more periods aggregating not more than 120 days in any 12-month period during the term of this Agreement in the event that (i) the Company would, in accordance with the written advice of its counsel, be required to disclose in the prospectus contained in such registration statement information not otherwise required by law to be publicly disclosed, (ii) the Company has pending or in process a material transaction, the disclosure of which would, in the good faith judgment of the Board, materially and adversely affect the Company or the transaction, or (iii) at the time of receipt of notice of a requested registration pursuant to Section 1.1 the Company was in the process of contemplating a registration of equity securities for its own account and (A) the Company gives written notice thereof to the Requesting Party within 10 days after receipt of such registration request and (B) a registration statement with respect to such Company initiated offering is filed within 90 days of receipt of such notice from the Requesting Party.

2. Incidental Registrations. If the Company at any time proposes to register any of its equity securities under the Securities Act for its own account (other than pursuant to a registration on Form S-4 or S-8 or any successor form) it shall give written notice thereof to each Stockholder. If within 10 days after the receipt of any such notice, any Stockholder requests that the Company include all or any portion of the Registrable Securities owned by such Stockholder in such registration, then, subject to subsection (a) below, the Company will give prompt written notice to all holders of Registrable Securities regarding such proposed registration. Upon the written request of any such holder made within 10 days after the receipt of any such notice (which request shall specify the number of Registrable Securities intended to be disposed of by such holder and the intended method or methods of disposition thereof), the Company will use its best efforts to effect the registration under the Securities Act of such Registrable Securities, together with any other securities proposed to be registered by other holders of the Company's securities exercising incidental registration rights with respect thereto, on a pro rata basis (based

on the number of Registrable Securities proposed to be registered by each such requesting holder and the number of other registrable securities proposed to be registered by each such other holder) in accordance with such intended method or methods of disposition, provided that:

(a) the Company shall not include any Registrable Securities of holders of Registrable Securities in such proposed registration if it believes in good faith that inclusion of such securities would not be in the best interests of the Company, provided that the Company will include in such registration that number of Registrable Securities of the holders of Registrable Securities that such managing underwriter and the Company determine would not be adverse to the best interests of the Company and provided further that the Company shall give the holders of Registrable Securities prompt notice after any such determination has been made (in lieu of the notice otherwise required under the second sentence of this Section 2);

(b) if, at any time after giving written notice pursuant to this Section 2 of its intention to register equity securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such equity securities, the Company may, at its election, give written notice of such determination to each holder of Registrable Securities and, thereupon, shall not be obligated to register any Registrable Securities in connection with such registration (but shall nevertheless pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of ING and/or its Permitted Transferees to request that a registration be effected under Section 1.1; and

(c) if, in connection with a registration pursuant to this Section 2, the managing underwriter of such registration (or, in the case of an offering that is not underwritten, a nationally recognized investment banking firm) shall advise the Company in writing (with a copy to each holder of Registrable Securities requesting registration thereof) that, in its opinion, the number of securities requested and otherwise proposed to be included in such registration exceeds the number which can be sold in such offering without materially and adversely affecting the offering price or the market price of the Common Stock or would otherwise jeopardize the offering, then in the case of any registration pursuant to this Section 2, the Company will include in such registration to the extent of the number which the Company is so advised can be sold in such offering without such material adverse effect, first if such registration is initiated by the Company pursuant to Section 1.1 of the Prior Registration Rights Agreement, the "Registrable Securities of all Stockholders (including the Requesting Party)" (with the preceding phrase having the same meaning as used in Section 1.4 of the Prior Registration Rights Agreement) together with the Registrable Securities of the Stockholders, if any, exercising incidental registration rights with respect thereto, on a pro rata basis (based on the number of shares of "Registrable Securities" owned by each such "Stockholder", as such terms are defined herein or in the Prior Registration Rights Agreement, as applicable), second, the securities (if any) being sold by the Company, and third, the securities, if any, of any other holder of securities of the Company exercising incidental registration rights with respect thereto, on a pro rata basis (based on the number of shares of registrable securities owned by each such holder), subject to the limitations of Section 7.

Notwithstanding the foregoing, the holders of Registrable Securities will not be entitled to participate in any registration pursuant to this Section 2 to the extent that the managing underwriter (or, in the case of an offering that is not underwritten, a nationally recognized investment banker) shall determine in good faith and in writing (with a copy to each affected Person requesting registration of Registrable Securities) that the participation of any such holder would adversely affect the marketability or offering price of the securities being sold by the Company or any Stockholder in such registration.

The Company will pay all Registration Expenses in connection with each registration of Registrable Securities requested pursuant to this Section 2, provided that each seller of Registrable Securities shall pay all Registration Expenses to the extent required to be paid by such seller under applicable law and all underwriting discounts and commissions and transfer taxes, if any. No registration effected under this Section 2 shall relieve the Company from its obligation to effect registrations under Sections 1.1.

3. Registration Procedures. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 1.1 and 2, the Company will promptly:

(a) prepare, and as soon as practicable, but in any event within 60 days thereafter, file with the Commission, a registration statement with respect to such Registrable Securities, make all required filings with the NASD and use its reasonable best efforts to cause such registration statement to become effective as soon as practicable;

(b) prepare and promptly file with the Commission such amendments and post-effective amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for so long as is required to comply with the provisions of the Securities Act and to complete the disposition of all securities covered by such registration statement in accordance with the intended method or methods of disposition thereof, but in no event for a period of more than six months after such registration statement becomes effective;

(c) furnish copies of all documents proposed to be filed with the Commission in connection with such registration to counsel selected by the holders of at least 51% of the Registrable Securities proposed to be sold in connection with such registration (such holders, the "MAJORITY HOLDERS"), and such documents shall be subject to the review of such counsel and the Majority Holders, and the Company shall not file any registration statement or amendment or post-effective amendment or supplement to such registration statement or the prospectus used in connection therewith to which either such counsel or the Majority Holders, as the case may be, shall have reasonably objected in writing on the grounds that such amendment or supplement does not comply (explaining why) in all material respects with the requirements of the Securities Act or of the rules or regulations thereunder;

(d) furnish to each seller of Registrable Securities, without charge, such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits and documents filed therewith) and such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller in accordance with the intended method or methods of disposition thereof;

(e) use its reasonable best efforts to register or qualify such Registrable Securities covered by such registration statement under the securities or blue sky laws of such jurisdictions as each seller shall reasonably request, and do any and all other acts and things which may be necessary or advisable to enable such seller to consummate the disposition of such Registrable Securities in such jurisdictions in accordance with the intended method or methods of disposition thereof, provided that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, subject itself to taxation in any jurisdiction wherein it is not so subject, or take any action which would subject it to general service of process in any jurisdiction wherein it is not so subject;

(f) use its reasonable best efforts to cause all Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies, authorities or self-regulatory bodies as may be necessary by virtue of the business and operations of the Company to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities in accordance with the intended method or methods of disposition thereof;

(g) furnish to each seller of Registrable Securities a signed counterpart, addressed to the sellers, of

(i) an opinion of outside counsel for the Company experienced in securities law matters, dated the effective date of the registration statement (or, if such registration includes an underwritten public offering, the date of the closing under the underwriting agreement), and

(ii) a "comfort" letter (unless the registration is pursuant to Section 2 and such a letter is not otherwise being furnished to the Company), dated the effective date of such registration statement (and if such registration includes an underwritten public offering, dated the date of the closing under the underwriting agreement), signed by the independent public accountants who have issued an audit report on the Company's financial statements included in the registration statement,

covering such matters as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in underwritten public offerings of

securities, subject to such qualifications as are customary in opinions and accountants' letters delivered in such circumstances;

(h) notify each seller of any Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event or existence of any fact as a result of which the prospectus included in such registration statement as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and, as promptly as is practicable, prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(i) otherwise comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement of the Company (in form complying with the provisions of Rule 158 under the Securities Act) covering the period of at least 12 months, but not more than 18 months, beginning with the first month after the effective date of such registration statement;

(j) notify each seller of any Registrable Securities covered by such registration statement (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed, and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission for amendments or supplements to such registration statement or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for that purpose and (iv) of the suspension of the qualification of such securities for offering or sale in any jurisdiction, or of the institution of any proceedings for any of such purposes;

(k) use its reasonable best efforts to obtain the lifting of any stop order that might be issued suspending the effectiveness of such registration statement as soon as practicable;

(l) use its reasonable best efforts (i) (A) to list such Registrable Securities on any securities exchange on which the equity securities of the Company are then listed or, if no such equity securities are then listed, on an exchange selected by the Company, if such listing is then permitted under the rules of such exchange, or (a) if such listing is not practicable, to secure designation of such securities as a NASDAQ "national market system security" within the meaning of Rule 11Aa2-1 under the Exchange Act or, failing that, to secure NASDAQ authorization for such Registrable Securities, and, without limiting the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with the NASD, and (ii) to provide a

transfer agent and registrar for such Registrable Securities not later than the effective date of such registration statement and to instruct such transfer agent upon sale of the Registrable Securities pursuant to such registration (A) to release any stop transfer order with respect to the certificates with respect to the Registrable Securities being sold and (B) to furnish certificates without restrictive legends representing ownership of the shares being sold, in such denominations requested by the sellers of the Registrable Securities or the lead underwriter;

(m) enter into such agreements and take such other actions as the sellers of Registrable Securities or the underwriters reasonably request in order to expedite or facilitate the disposition of such Registrable Securities, including, without limitation, preparing for, and participating in, such number of "road shows" and all such other customary selling efforts as the underwriters reasonably request in order to expedite or facilitate such disposition;

(n) furnish to any holder of such Registrable Securities such information and assistance as such holder may reasonably request in connection with any "due diligence" effort which such seller reasonably deems appropriate; and

(o) use its reasonable best efforts to take all other steps necessary to effect the registration of such Registrable Securities contemplated hereby.

As a condition to its registration of Registrable Securities of any prospective seller, the Company may require such seller of any Registrable Securities as to which any registration is being effected to furnish to the Company such information regarding such seller, its ownership of Registrable Securities and the disposition of such Registrable Securities as the Company may from time to time reasonably request in writing and as shall be required by law in connection therewith, together with such certificates, if any, as may be required to permit the delivery of the opinions and comfort letters contemplated by Section 3(g) and the execution of the underwriting agreement and the delivery of the documents required to be delivered thereunder. Each such holder agrees to furnish promptly to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such holder not materially misleading.

The Company agrees not to file or make any amendment to any registration statement with respect to any Registrable Securities, or any amendment of or supplement to the prospectus used in connection therewith, which refers to any seller of any Registrable Securities covered thereby by name, or otherwise identifies such seller as the holder of any Registrable Securities, without the consent of such seller, such consent not to be unreasonably withheld or delayed, unless such disclosure is required by law.

By acquisition of Registrable Securities, each holder of such Registrable Securities shall be deemed to have agreed that upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(h), such holder will promptly discontinue such holder's disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(h). If so directed by the Company, each holder of

Registrable Securities will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, in such holder's possession of the prospectus covering such Registrable Securities at the time of receipt of such notice. In the event that the Company shall give any such notice, the period mentioned in Section 3(b) shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of any Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus contemplated by Section 3(h).

4. Underwritten Offerings.

4.1. Underwriting Agreement. If requested by the underwriters for any underwritten offering pursuant to a registration requested under Section 1.1 or 2, the Company shall enter into an underwriting agreement with the underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the underwriters and the Majority Holders. Any such underwriting agreement shall contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in agreements of this type, including, without limitation and unless waived by the Majority Holders, indemnities to the effect and to the extent provided in Section 9. The holders of Registrable Securities to be distributed by such underwriter shall be parties to such underwriting agreement. No underwriting agreement (or other agreement in connection with such offering) shall require any Stockholder, in its capacity as stockholder and/or controlling Person, to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such holder, the ownership of such holder's Registrable Securities and such holder's intended method or methods of disposition and any other representation customarily furnished by selling stockholders in similar transactions or required by law.

4.2. Selection of Underwriters. If the Company at any time proposes to register any of its securities under the Securities Act for sale for its own account pursuant to an underwritten offering in which holders of Registrable Securities are participants, or in the case of any registration requested pursuant to Section 1.1 that is for an underwritten offering, the Company will have the right to select the managing underwriter (which shall be of nationally recognized standing) to administer the offering.

5. Holdback Agreements. (a) If and whenever the Company proposes to register any of its equity securities under the Securities Act for its own account (other than on Form S-4 or S-8 or any successor form) or is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 1.1 or 2, each holder of Registrable Securities agrees by acquisition of such Registrable Securities not to request registration under Section 1.1 of any Registrable Securities and, if it is then an officer, director or the beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of more than 5% of any class of the Company's equity securities (or any securities convertible into or exchangeable or exercisable for any of such securities), not to effect any public sale or distribution of the Company's equity securities (other than pursuant to such registration), within seven days prior to and 90 days (unless advised in writing by the managing underwriter that a longer period, not to exceed 180 days, is required, or such shorter period as the managing underwriter for any underwritten offering may agree) after the effective date of the registration statement relating to such registration, except its part of such registration.

(b) The Company agrees not to effect any public sale or distribution of its equity securities or securities convertible into or exchangeable or exercisable for any of such securities within seven days prior to and 90 days (unless advised in writing by the managing underwriter that a longer period, not to exceed 180 days, is required, or such shorter period as the managing underwriter for any underwritten offering may agree) after the effective date of any registration statement filed pursuant to Section 1.1 (except as part of such registration or pursuant to a registration on Form S-4 or S-8 or any successor form). In addition, upon the request of the managing underwriter, the Company shall use its reasonable efforts to cause each officer, director or beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of more than 5% of any class of the Company's equity securities (or any securities convertible into or exchangeable or exercisable for any of such securities), other than any such securities acquired in a public offering, to agree not to effect any such public sale or distribution of such securities during such period, except as part of any such registration if permitted, and to cause each such officer, director and beneficial holder to enter into a similar agreement to such effect with the Company.

6. Preparation; Reasonable Investigation. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the holders of such Registrable Securities so to be registered and their underwriters, if any, and their respective counsel and accountants the opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the Commission, and each amendment thereof or supplement thereto, and will give each of them such access to the financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have issued audit reports on its financial statements as shall be reasonably requested by such holders in connection with such registration statement.

7. Other Registration Rights. ING acknowledges that the Company is a party to that certain Registration Rights Agreement dated as of June 30, 1999 by and among the Company, C.P. International Investments Limited, MCM Holding Company LLC and certain other parties named therein (the "PRIOR REGISTRATION RIGHTS AGREEMENT") and consents to all terms and provisions of the Prior Registration Rights Agreement. To the extent that the Prior Registration Rights Agreement provides demand or incidental registration rights that are of a higher priority to the rights granted to holders of Registrable Securities hereunder, or to the extent there is any conflict between any term or provision of the Prior Registration Rights Agreement and any term or provision set forth herein, the parties acknowledge and agree that the terms and provisions of the Prior Registration Rights Agreement shall take priority over the terms and provisions of this Agreement. The Company shall not grant to any Person any other incidental registration rights from and after the date hereof that are of the same or higher priority to the rights granted to the holders of Registrable Securities under Section 2 hereof during the term of this Agreement; provided, however, that the Company may grant registration rights equal in priority to the registration rights granted hereunder in connection with any issuance of indebtedness under Section 6.2.2(b) of the Note Purchase Agreement.

8. [Reserved]

9. Indemnification.

9.1. Indemnification by the Company. In the event of any registration of any Registrable Securities pursuant to this Agreement, the Company agrees to indemnify, defend and hold harmless (a) each seller of such Registrable Securities, (b) the directors, members, stockholders, officers, partners, employees, agents and Affiliates of such seller, (c) each Person who participates as an underwriter in the offering or sale of such securities and (d) each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) any of the foregoing against any and all losses, claims, damages, expenses or other liabilities (or actions or proceedings in respect thereof), jointly or severally, directly or indirectly, based upon or arising out of (i) any untrue statement or alleged untrue statement of a fact contained in any registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained therein or used in connection with the offering of securities covered thereby, or any amendment or supplement thereto, or (ii) any omission or alleged omission to state a fact required to be stated therein or necessary to make the statements therein not misleading; and the Company will reimburse each such indemnified party for any legal or any other expenses reasonably incurred by them in connection with enforcing its rights hereunder or under the underwriting agreement entered into in connection with such offering or investigating, preparing, pursuing or defending any such loss, claim, damage, liability, action or proceeding, except insofar as any such loss, claim, damage, liability, action, proceeding or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by such seller expressly for use in the preparation thereof, (B) the gross negligence, willful misconduct or fraud of such seller, or (C) any preliminary prospectus to the extent that any such loss claim, damage, liability, action or proceeding results solely from the fact that the seller sold Registrable Securities to a person as to whom the Company shall establish that there was not sent by

commercially reasonable means, at or prior to the written confirmation of such sale, a copy of the final prospectus in any case where such delivery is required by the Securities Act, if the Company has previously furnished copies thereof in sufficient quantity to the seller or the underwriters for such offering and the loss, claim, damage, liability, action or proceeding results from an untrue statement or omission of a material fact contained in the preliminary prospectus that was corrected in the final prospectus. Such indemnity shall remain in full force and effect regardless of any investigation made by such indemnified party and shall survive the transfer of such Registrable Securities by such seller. If the Company is entitled to, and does, assume the defense of the related action or proceedings provided herein, then the indemnity agreement contained in this Section 9.1 shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or proceeding if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld or delayed). The Company shall also indemnify any underwriters of the Registrable Securities, their officers, directors and employees, and each person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) to the same extent as provided above with respect to indemnification of the seller of Registrable Securities.

9.2. Indemnification by the Sellers. The Company may require, as a condition to including any Registrable Securities in any registration statement filed pursuant to Section 1.1 or 2 that the Company shall have received an undertaking reasonably satisfactory to it from each of the prospective sellers of such Registrable Securities to indemnify and hold harmless, severally, not jointly, in the same manner and to the same extent as set forth in Section 9.1, the Company, its directors, officers, employees, agents and each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company, but only with respect to (i) any written information furnished to the Company by such seller expressly for use in the preparation of such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement, or (ii) the gross negligence, willful misconduct or fraud of such seller. The Company and the holders of the Registrable Securities hereby acknowledge and agree that, unless otherwise expressly agreed to in writing by such holders, the only information furnished to or to be furnished to the Company for use in any registration statement or prospectus relating to the Registrable Securities or in any amendment, supplement or preliminary materials associated therewith are statements specifically relating to (a) transactions between such holder and its Affiliates, on the one hand, and the Company, on the other hand, (b) the beneficial ownership of shares of Common Stock by such holder and its Affiliates and (c) the name and address of such holder. If any additional information about such holder or the plan of distribution (other than for an underwritten offering) is required by law to be disclosed in any such document, then such holder shall not unreasonably withhold its agreement referred to in the immediately preceding sentence of this Section 9.2. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling Person and shall survive the transfer of such Registrable Securities by such seller. The indemnity agreement contained in this Section 9.2 shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or proceeding if such settlement is effected without the consent of such seller (which consent shall not be unreasonably withheld or delayed). The indemnity provided by each seller of Registrable Securities under this Section 9.2 shall be limited in amount to the net amount of proceeds

actually received by such seller from the sale of Registrable Securities pursuant to such registration statement giving rise to such liability.

9.3. Notices of Claims, etc. Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in the preceding paragraphs of this Section 9, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the indemnifying party of the commencement of such action or proceeding, provided that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 9, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party will be entitled to participate therein and to assume the defense thereof jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof except for the reasonable fees and expenses of any counsel retained by such indemnified party to monitor such action or proceeding. Notwithstanding the foregoing, if such indemnified party reasonably determines, based upon advice of independent counsel, that a conflict of interest exists between the indemnified party and the indemnifying party with respect to such action and that it is advisable for such indemnified party to be represented by separate counsel or that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnifying party, such indemnified party may retain other counsel, reasonably satisfactory to the indemnifying party, to represent such indemnified party, and the indemnifying party shall pay all reasonable fees and expenses of such counsel. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of such indemnified party, which consent shall not be unreasonably withheld, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The rights accorded to any indemnified party hereunder shall be in addition to any rights that such indemnified party may have at common law, by separate agreement or otherwise.

9.4. Other Indemnification. Indemnification similar to that specified in the preceding paragraphs of this Section 9 (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required registration (other than under the Securities Act) or other qualification of such Registrable Securities under any federal or state law or regulation of any governmental authority.

9.5. Indemnification Payments. Any indemnification required to be made by an indemnifying party pursuant to this Section 9 shall be made by periodic payments to the indemnified party during the course of the action or proceeding, as and when bills are received by such indemnifying party, with respect to an indemnifiable loss, claim, damage, liability or expense incurred by such indemnified party.

9.6. Other Remedies. If for any reason the foregoing indemnity is unavailable, or is insufficient to hold harmless an indemnified party, other than by reason of the exceptions provided therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities, actions, proceedings or expenses in such proportion as is appropriate to reflect the relative benefits to and faults of the indemnifying party on the one hand and the indemnified party on the other in connection with the offering of Registrable Securities and the statements or omissions or alleged statements or omissions which resulted in such loss, claim, damage, liability, action, proceeding or expense, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statements or omissions. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. No party shall be liable for contribution under this Section 9.6 except to the extent as such party would have been liable to indemnify under this Section 9 if such indemnification were enforceable under applicable law.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 9.6 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph.

10. Representations and Warranties. Each Stockholder, severally and not jointly, represents and warrants to the Company and each other Stockholder that:

(i) such Stockholder has the power, authority and capacity (or, in the case of any Stockholder that is a corporation or limited partnership, all corporate or limited partnership power and authority, as the case may be) to execute, deliver and perform this Agreement;

(ii) in the case of a Stockholder that is a corporation or limited partnership, the execution, delivery and performance of this Agreement by such Stockholder has been duly and validly authorized and approved by all necessary corporate or limited partnership action, as the case may be;

(iii) this Agreement has been duly and validly executed and delivered by such Stockholder and constitutes a valid and legally binding obligation of such Stockholder, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally and general principles of equity; and

(iv) the execution, delivery and performance of this Agreement by such Stockholder does not and will not violate the terms of or result in the acceleration of any obligation under (A) any material contract, commitment or other material instrument to which such Stockholder is a party or by which such Stockholder is bound, (B) in the case of a Stockholder that is a corporation or limited partnership, the certificate of incorporation,

certificate of limited partnership, by-laws or limited partnership agreement, as the case may be, or (C) any law, statute, regulation, order or decree applicable to such Stockholder.

11. Definitions. For purposes of this Agreement, the following terms shall have the following respective meanings:

Affiliate: (i) with respect to any Person, a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and (ii) with respect to any natural Person, (A) the spouse, parents and direct descendants of such Person, (B) the estate, testamentary trust, trustees, executors, administrators, legatees or testamentary beneficiaries of such Person, and (C) any trust established by such Person for the exclusive benefit of any of the foregoing Persons.

Affiliated Stockholder: with respect to ING, each of its Affiliates if and so long as it owns any Registrable Securities and has agreed in writing to be bound by the terms and conditions of this Agreement, a copy of which agreement shall have been delivered to the Company.

Board: the board of directors of the Company.

Commission: the Securities and Exchange Commission.

Common Stock: the Common Stock of the Company, par value $.01 per share, and any securities into which such Common Stock shall have been changed or any securities resulting from any reclassification of such Common Stock.

Exchange Act: the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations thereunder which shall be in effect at the time.

Majority Holders: as defined in Section 3(c).

NASD: National Association of Securities Dealers, Inc.

NASDAQ: the Nasdaq National Market.

Note Purchase Agreement: as defined in the first recital of this Agreement.

Permitted Transferee: as defined in Section 12.2.

Person: an individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality, thereof.

Prior Registration Rights Agreement: as defined in Section 7.

Registrable Securities: the shares of Common Stock issued or issuable upon exercise of warrants issued pursuant to that certain Warrant Agreement dated as of January 12,

2000 by and between the Company and ING (the "Warrants") and any other shares of Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares of Common Stock issued or issuable upon exercise of the Warrants. As to any particular shares of Common Stock, such securities shall cease to be Registrable Securities when (i) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) such securities shall have been sold to the public pursuant to Rule 144 under the Securities Act or are eligible for resale by the holder thereof without regard to volume limitation pursuant to paragraph (k) of Rule 144 under the Securities Act, (iii) such securities shall have been otherwise transferred other than to a Permitted Transferee and subsequent disposition of them shall not require registration or qualification of them under the Securities Act or any similar state law then in force or (iv) such securities shall have ceased to be outstanding.

Registration Expenses: all expenses incident to the Company's performance of or compliance with any registration pursuant to this Agreement, including, without limitation, (i) registration, filing and NASD fees, (ii) fees and expenses of complying with securities or blue sky laws, (iii) fees and expenses associated with listing securities on an exchange or NASDAQ, (iv) word processing, duplicating and printing expenses, (v) messenger and delivery expenses, (vi) transfer agents', trustees', depositories', registrars' and fiscal agents fees, (vii) reasonable fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of any special audits or "cold comfort" letters, (viii) reasonable fees and disbursements of any one counsel retained by the sellers of Registrable Securities, which counsel shall be designated in the manner specified in Section 3 and (ix) any fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding underwriting discounts and commissions and transfer taxes, if any.

Securities Act: the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder which shall be in effect at the time.

Stockholders: (i) ING, if and so long as it owns any Registrable Securities, and (ii) each Affiliated Stockholder.

12. Miscellaneous.

12.1. Rule 144, etc. If the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act relating to any class of securities, the Company will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder, and will take such further action as any holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 under the Securities Act, as such rule may be amended from time to time or (b) any successor rule or regulation hereafter adopted by the Commission. Upon the request of any holder of Registrable Securities, the

Company will deliver to such holder a written statement as to whether it has complied with such requirements.

12.2. Successors, Assigns and Transferees. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective predecessors and permitted assigns under this Section 12.2. Provided that an express assignment shall have been made, a copy of which shall have been delivered to the Company, the provisions of this Agreement which are for the benefit of a holder of Registrable Securities shall be for the benefit of and enforceable by any subsequent holder of any Registrable Securities to which such Registrable Securities are transferred in compliance with the provisions of such Registrable Securities and the applicable provisions of the Note Purchase Agreement ("PERMITTED TRANSFEREES"), subject to the provisions respecting the minimum numbers or percentages of shares of Registrable Securities required in order to be entitled to certain rights, or to take certain actions, contained herein.

12.3. Amendment and Modification. This Agreement may be amended, modified or supplemented by the Company with the written consent of a majority (by number of shares) of the holders of Registrable Securities, provided that all Stockholders shall be notified of such amendment, modification or supplement.

12.4. Governing Law. This Agreement and the rights and obligations of the parties hereunder and the persons subject hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York, without giving effect to the choice of law principles thereof.

12.5. Invalidity of Provision. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, in any other jurisdiction.

12.6. Notices. All notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax, as follows:

(i) If to the Company, to it at:

MCM Capital Group, Inc.
4302 East Broadway
Phoenix, Arizona 85040
Attention: Chief Executive Officer
Telecopier No.: (602) 707-5509

with a copy to:

MCM Capital Group, Inc.
4302 East Broadway
Phoenix, Arizona 85040
Attention: General Counsel
Telecopier No.: (602) 707-5509

and copies to:

Squire, Sanders & Dempsey L.L.P.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
Attention: Timothy W. Moser, Esq.
Telecopier No.: (602) 253-8129

and
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004
Attention: Steven D. Pidgeon
Telecopier No.: (602) 382-6070

(ii) If to ING, to it at:

ING (U.S.) Capital, LLC
55 East 52nd Street
New York, New York 10015
Attention: David Balestrery
Ira Braunstein
Telecopier No.: (212) 593-3360

with a copy to:

Mayer, Brown & Platt
1675 Broadway
New York, New York 10019
Attention: David K. Duffee, Esq.
Telecopier No.: (212) 262-1910

or to such other person or address as any party shall specify by notice in writing to the Company. All such notices, requests, demands, letters, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day after such delivery, (x) if by certified or registered mail, on the eighth business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered or (z) if by fax, on the next day

following the day on which such fax was sent, provided that a copy is also sent by certified or registered mail.

12.7. Headings; Execution in Counterparts. The headings and captions contained herein are for convenience and shall not control or affect the meaning or construction of any provision hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

12.8. Injunctive Relief. Each of the parties recognizes and agrees that money damages may be insufficient and, therefore, in the event of a breach of any provision of this Agreement the aggrieved party may elect to institute and prosecute proceedings in any court of competent jurisdiction to enforce specific performance or to enjoin the continuing breach of this Agreement. Such remedies shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which such party may have.

12.9. Term. This Agreement shall be, effective as of the date hereof and shall continue in effect thereafter until the earlier of (a) its termination by the consent of the parties hereto or their respective successors in interest, (b) the date on which no Registrable Securities remain outstanding, and (c) the date on which all remaining Registrable Securities are subject to immediate resale by the holder thereof without regard to volume limitation pursuant to paragraph (k) of Rule 144 under the Securities Act.

12.10. Further Assurances. Subject to the specific terms of this Agreement, each of the Company and the Stockholders shall make, execute, acknowledge and deliver such other instruments and documents, and take all such other actions, as may be reasonably required in order to effectuate the purposes of this Agreement and to consummate the transactions contemplated hereby.

12.11. Entire Agreement. This Agreement is intended by the parties hereto as a final expression of their agreement and intended to be a complete and exclusive statement of their agreement and understanding in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF this Agreement has been signed by each of the parties hereto, and shall be effective as of the date first above written.

MCM CAPITAL GROUP, INC.

By: /s/ Robert E. Koe

Name: Robert E. Koe
Title: President

ING (U.S.) CAPITAL LLC

By: /s/ David Balestrery

Name: David Balestrery
Title: Vice President

[FORM OF LETTER AGREEMENT]

January 12, 2000

MCM Capital Group, Inc.
4302 East Broadway
Phoenix, Arizona 85040
Attn: Chief Executive Officer

Re: Registration Rights Agreement (the "First Registration Rights Agreement") dated as of June 30, 1999 by and among MCM Capital Group, Inc. (the "Company"), C.P. International Investments Limited and its Affiliated Stockholders, MCM Holding Company LLC and its Affiliated Stockholders, and certain other persons and their Affiliated Stockholders referred to therein as the MCM Holding Distributees

Ladies and Gentlemen:

Each of the undersigned is a party (or a successor in interest to a party) to the First Registration Rights Agreement referred to above and, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby consents and agrees (i) to the execution and delivery by the Company of that certain Registration Rights Agreement dated as of the date hereof (the "Second Registration Rights Agreement") by and between the Company and ING (U.S.) Capital LLC, and (ii) to the agreement by the Company to all terms and provisions of the Second Registration Rights Agreement, including without limitation the granting of demand and incidental rights thereunder on the terms and conditions set forth therein.

The Company and each of the undersigned hereby further agrees that all shares of common stock, $.01 par value per share, of the Company ("Common Stock") issued or issuable upon exercise of warrants issued pursuant to that certain Warrant Agreement dated as of January 12, 2000 by and between the Company and Triarc Companies, Inc. shall, to the extent beneficially owned (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934) by CPII, the MCM Distributees or their Permitted Transferees (as such terms are defined in the First Registration Rights Agreement), constitute "Registrable Securities" for all purposes of the First Registration Rights Agreement.

This instrument is intended to, and shall, constitute a written consent to the Second Registration Rights Agreement for purposes of Section 7 of the First Registration Rights Agreement. Notwithstanding the preceding paragraph, this consent shall be applicable only to the Second Registration Rights Agreement in the form originally executed and shall not be applicable to any amendment, restatement or other modification thereof.

The parties acknowledge that Nelson Peltz, Peter W. May and Triarc Companies, Inc. are the direct or indirect beneficial owners of shares of Common Stock and constitute the "MCM Holding Distributee Majority" as such term is used in Section 7 of the First Registration Rights Agreement and are executing this letter agreement in such capacity, regardless of the form of legal ownership pursuant to which such shares are beneficially owned.

C.P. International Investments Limited

By:

Name:
Title:

Triarc Companies, Inc.

By:

Name:
Title:

Nelson Peltz

Peter W. May

MCM Capital Group, Inc.

By:

Name:
Title:

Exhibit 10.5

REGISTRATION RIGHTS AGREEMENT

MCM CAPITAL GROUP, INC.

Dated as of June 30, 1999

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT is dated as of the 30th day of June, 1999 among MCM Capital Group, Inc., a Delaware corporation (the "COMPANY"), C.P. International Investments Limited, a Bahamian company (together with its Affiliated Stockholders (as herein defined), if any, "CPII"), MCM Holding Company LLC, a New York limited liability company (together with its Affiliated Stockholders, if any, "MCM HOLDING"), and each of the persons whose names are listed on Schedule A hereto (together with their respective Affiliated Stockholders, if any, the "MCM HOLDING DISTRIBUTEES"). Capitalized terms used but not otherwise defined herein have their respective meanings set forth in Section 11.

WHEREAS, CPII and MCM Holding have entered into a Stock Purchase Agreement, dated February 13, 1998 (the "STOCK PURCHASE AGREEMENT"), with the Company and the then stockholders of the Company (the "INITIAL STOCKHOLDERS"), pursuant to which CPII and MCM Holding agreed to purchase from the Initial Stockholders certain shares of common stock of Midland Corporation of Kansas, the corporate predecessor to the Company ("MIDLAND KANSAS"), on the terms and subject to the conditions therein set forth;

WHEREAS, as a condition to execution and delivery by CPII and MCM Holding of the Stock Purchase Agreement, Midland Kansas, the Initial Stockholders, CPII and MCM Holding entered into a Stockholders' Agreement, dated as of February 13, 1998 (the "STOCKHOLDERS' AGREEMENT"), providing for certain rights and obligations of the parties thereto;

WHEREAS, pursuant to separate Certificates of Merger, filed with the Secretary of State of the State of Delaware and the Secretary of State of the State of Kansas, respectively, effective prior to the date hereof, Midland Kansas merged with and into the Company with the Company as the surviving corporation, whereupon the Company succeeded to the rights and obligations of Midland Kansas and CPII and MCM Holding became stockholders of the Company;

WHEREAS, the Company desires to consummate an IPO and, in connection therewith, to eliminate certain rights held by CPII and MCM Holding pursuant to the Stockholders' Agreement pursuant to an amendment to the Stockholders' Agreement, dated as of June 21, 1999 (the "STOCKHOLDERS' AGREEMENT AMENDMENT");

WHEREAS, immediately following the consummation of the IPO, MCM Holding expects to distribute shares of Common Stock held by MCM Holding to the MCM Holding Distributees, who represent all of the members of MCM Holding; and

WHEREAS, it is a condition of the execution and delivery by CPII and MCM Holding of the Stockholders' Agreement Amendment, that the Company enter into this Agreement for the purpose of providing for certain registration rights for the benefit of holders of Registrable Securities;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

1. Registrations Upon Request.

1.1. Requests by Stockholders. At any time, the MCM Holding Distributees (as a group) and CPII shall each have the right to make requests that the Company effect up to two separate registrations under the Securities Act of all or part of the Registrable Securities owned by them, respectively; provided that (i) in the case of the MCM Holding Distributees, such right to request up to two registrations will be exercisable by any MCM Holding Distributees owning singly or in the aggregate at least 25% of the then outstanding Registrable Securities then owned by all MCM Holding Distributees (the "QUALIFIED MCM STOCKHOLDERS") and (ii) at any time when CPII owns fewer Registrable Securities than its Permitted Transferees, such right of CPII to request up to two registrations will be exercisable by those entities owning in excess of 50% of the outstanding Registrable Securities then owned by CPII and its Permitted Transferees. A request made either by the Qualified MCM Stockholders or by CPII and/or its Permitted Transferees pursuant to the immediately preceding sentence (in either case, the "REQUESTING PARTY") shall not be counted for purposes of the request limitations set forth above if (a) the Requesting Party determines in its good faith judgment to withdraw the proposed registration of any Registrable Securities requested to be registered pursuant to this Section 1.1 due to marketing or regulatory reasons, (b) the registration statement relating to any such request is not declared effective within 90 days of the date such registration statement is first filed with the Commission and the Requesting Party determines to withdraw the proposed registration, (c) within 180 days after the registration relating to any such request has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason and the Company fails to have such stop order, injunction or other order or requirement removed, withdrawn or

resolved to the Requesting Party's reasonable satisfaction within 30 days, (d) more than 10% of the Registrable Securities requested by the Requesting Party to be included in the registration are not so included pursuant to Section 1.4, (e) the conditions to closing specified in the underwriting agreement or purchase agreement entered into in connection with the registration relating to any such request are not satisfied (other than as a result of a default or breach thereunder by the Requesting Party), (f) the registration relating to such request is an IPO in which the Company elects to sell shares of Common Stock, or (g) the registration relating to such request is preempted by a proposed Company registration, notice of which is given by the Company to the Requesting Party pursuant to Section 1.5(b)(iii), and the Requesting Party determines to withdraw its registration request prior to a registration statement relating thereto becoming effective.

Upon any such registration request, the Company will promptly, but in any event within 10 days, give written notice of such request to all holders of Registrable Securities and thereupon the Company will, subject to Sections 1.4 and 1.5, use its best efforts to effect the prompt registration under the Securities Act of:

(i) the Registrable Securities which the Company has been so requested to register by the Requesting Party, and

(ii) all other Registrable Securities which the Company has been requested to register by the holders thereof by written request given to the Company by such holders within 10 days after the giving of such written notice by the Company to such holders,

all to the extent required to permit the disposition of the Registrable Securities so to be registered in accordance with the intended method or methods of disposition of each seller of such Registrable Securities.

1.2. Registration Statement Form. A registration requested pursuant to Section 1.1 shall be effected by the filing of a registration statement on a form reasonably acceptable to the Requesting Party, it being understood that the Company shall, where permitted under the Securities Act, seek to qualify for registration on Form S-3 (or any other comparable form hereinafter adopted).

1.3. Expenses. The Company will pay all Registration Expenses in connection with any registration requested under Section 1.1; provided that (a) each seller of Registrable Securities shall pay all Registration Expenses to the extent required to be paid by such seller under applicable law and all underwriting discounts and commissions and transfer taxes, if any, and (b) if, pursuant to clause (a) of Section 1.1, a Requesting Party determines in its good faith judgment to withdraw the proposed registration of any

Registrable Securities requested to be registered pursuant to Section 1.1 due to marketing reasons after the filing of a registration statement with respect to such Registrable Securities, the Requesting Party shall reimburse the Company for its reasonable out-of-pocket expenses incurred in connection with the preparation and filing of such registration statement unless the Requesting Party agrees in writing to have the withdrawn registration treated as one of its two registration requests permitted pursuant to Section 1.1.

1.4. Priority in Demand Registrations. If a registration pursuant to Section 1.1 involves an underwritten offering, and the managing underwriter (or, in the case of an offering which is not underwritten, a nationally recognized investment banking firm) shall advise the Company in writing (with a copy to each Person requesting registration of Registrable Securities) that, in its opinion, the number of securities requested and other wise proposed to be included in such registration exceeds the number which can be sold in such offering without materially and adversely affecting the offering price or the market price of the Common Stock or would otherwise jeopardize the offering, the Company will include in such registration to the extent of the number which the Company is so advised can be sold in such offering without such material adverse effect, first, the Registrable Securities of all Stockholders (including the Requesting Party), on a pro rata basis (based on the number of shares of Registrable Securities owned by each such Stockholder), second, the securities, if any, being sold by the Company, and third, the securities, if any, of any other securitiesholder of the Company entitled to incidental registration rights with respect thereto, subject to the limitations of Section 7.

1.5. No Company or Other Stockholder Initiated Registration; Deferral of Registration. (a) After receipt of notice of a requested registration pursuant to Section 1.1, neither the Company nor any other Stockholder shall initiate, without the consent of the Requesting Party, a registration of any Company securities for its own account until 90 days after such registration has been effected or such registration has been terminated.

(b) Notwithstanding the foregoing, the Company shall have the right to delay the filing or effectiveness, but not the preparation, of a registration statement for any requested registration pursuant to Section 1.1 during one or more periods aggregating not more than 90 days in any 12-month period during the term of this Agreement in the event that (i) the Company would, in accordance with the written advice of its counsel, be required to disclose in the prospectus contained in such registration statement information not otherwise required by law to be publicly disclosed and (ii) the Company has pending or in process a material transaction, the disclosure of which would, in the good faith judgment of the Company's Board of Directors, materially and adversely affect the Company or the transaction, or (iii) at the time of receipt of notice of a requested registration pursuant to Section 1.1 the Company was in the process of contemplating a

registration of equity securities for its own account and (A) the Company gives written notice thereof to the Requesting Party within 10 days after receipt of such registration request and (B) a registration statement with respect to such Company initiated offering is filed within 60 days of receipt of such notice from the Requesting Party.

2. Incidental Registrations. If the Company at any time proposes to register any of its equity securities under the Securities Act for its own account (other than pursuant to a registration on Form S-4 or S-8 or any successor form) it shall give written notice thereof to each Stockholder. If, within 10 days after the receipt of any such notice, any Stockholder requests that the Company include all or any portion of the Registrable Securities owned by such Stockholder in such registration, then, subject to subsection (a) below, the Company will give prompt written notice to all holders of Registrable Securities regarding such proposed registration. Upon the written request of any such holder made within 10 days after the receipt of any such notice (which request shall specify the number of Registrable Securities intended to be disposed of by such holder and the intended method or methods of disposition thereof), the Company will use its best efforts to effect the registration under the Securities Act of such Registrable Securities on a pro rata basis (based on the number of shares of Registrable Securities owned by each such requesting holder) in accordance with such intended method or methods of disposition, provided that:

(a) without the prior written consent of the Stockholders, the Company shall not include any Registrable Securities of holders of Registrable Securities other than the Stockholders in such proposed registration if it believes in good faith that inclusion of such securities would not be in the best interests of the Company, provided that the Company will include in such registration that number of Registrable Securities of the holders of Registrable Securities that such managing underwriter and the Company determine would not be adverse to the best interests of the Company and provided, further, that the Company shall give the holders of Registrable Securities prompt notice after any such determination has been made (in lieu of the notice otherwise required under the second sentence of this Section 2);

(b) if, at any time after giving written notice (pursuant to this Section 2) of its intention to register equity securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such equity securities, the Company may, at its election, give written notice of such determination to each holder of Registrable Securities and, thereupon, shall not be obligated to register any Registrable Securities in connection with such registration (but shall nevertheless pay the Registration Expenses in connection therewith), without prejudice,

however, to the rights of the Qualified MCM Stockholders and CPII, respectively, to request that a registration be effected under Section 1.1; and

(c) if in connection with a registration pursuant to this Section 2, the managing underwriter of such registration (or, in the case of an offering that is not underwritten, a nationally recognized investment banking firm) shall advise the Company in writing (with a copy to each holder of Registrable Securities requesting registration thereof) that, in its opinion, the number of securities requested and otherwise proposed to be included in such registration exceeds the number which can be sold in such offering without materially and adversely affecting the offering price or the market price of the Common Stock or would otherwise jeopardize the offering, then in the case of any registration pursuant to this Section 2, the Company will include in such registration to the extent of the number which the Company is so advised can be sold in such offering without such material adverse effect, first, the securities, if any, being sold by the Company, second, the Registerable Securities of the Stockholders, on a pro rata basis (based on the number of shares of Registrable Securities owned by each such Stockholder), third, the Registrable Securities of any other holder, on a pro rata basis (based on the number of shares of Registrable Securities owned by each such holder), and fourth, the securities, if any, of any other securitiesholder of the Company entitled to incidental registration rights with respect thereto, subject to the limitations of Section 7.

Notwithstanding the foregoing, the holders of Registrable Securities other than the Stockholders will not be entitled to participate in any registration pursuant to this Section 2 to the extent that the managing underwriter (or, in the case of an offering that is not underwritten, a nationally recognized investment banker) shall determine in good faith and in writing (with a copy to each affected Person requesting registration of Registrable Securities) that the participation of any such holder would adversely affect the marketability or offering price of the securities being sold by the Company or any Stockholder in such registration.

The Company will pay all Registration Expenses in connection with each registration of Registrable Securities requested pursuant to this Section 2, provided that each seller of Registrable Securities shall pay all Registration Expenses to the extent required to be paid by such seller under applicable law and all underwriting discounts and commissions and transfer taxes, if any. No registration effected under this Section 2 shall relieve the Company from its obligation to effect registrations under Sections 1.1.

3. Registration Procedures. If and whenever the Company is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 1.1 and 2, the Company will promptly:

(a) prepare, and as soon as practicable, but in any event within 60 days thereafter, file with the Commission, a registration statement with respect to such Registrable Securities, make all required filings with the NASD and use its reasonable best efforts to cause such registration statement to become effective as soon as practicable;

(b) prepare and promptly file with the Commission such amendments and post-effective amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for so long as is required to comply with the provisions of the Securities Act and to complete the disposition of all securities covered by such registration statement in accordance with the intended method or methods of disposition thereof, but in no event for a period of more than six months after such registration statement becomes effective;

(c) furnish copies of all documents proposed to be filed with the Commission in connection with such registration to (i) in the case of a registration pursuant to Section 1.1 or 2 in which CPII is participating, counsel selected by CPII, and (ii) in the case of a registration pursuant to Section 1.1 or 2 in which MCM Holding Distributees are participating, counsel selected by the holders of at least 51% of the Registrable Securities proposed to be sold by such MCM Holding Distributees in connection with such registration (such holders, the "MAJORITY HOLDERS"), and such documents shall be subject to the review of such counsel and CPII and/or the Majority Holders, as the case may be, and the Company shall not file any registration statement or amendment or post-effective amendment or supplement to such registration statement or the prospectus used in connection therewith to which either such counsel or CPII or the Majority Holders, as the case may be, shall have reasonably objected in writing on the grounds that such amendment or supplement does not comply (explaining why) in all material respects with the requirements of the Securities Act or of the rules or regulations thereunder;

(d) furnish to each seller of Registrable Securities, without charge, such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits and documents filed therewith) and such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any

summary prospectus) and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller in accordance with the intended method or methods of disposition thereof;

(e) use its reasonable best efforts to register or qualify such Registrable Securities covered by such registration statement under the securities or blue sky laws of such jurisdictions as each seller shall reasonably request, and do any and all other acts and things which may be necessary or advisable to enable such seller to consummate the disposition of such Registrable Securities in such jurisdictions in accordance with the intended method or methods of disposition thereof, provided that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, subject itself to taxation in any jurisdiction wherein it is not so subject, or take any action which would subject it to general service of process in any jurisdiction wherein it is not so subject;

(f) use its reasonable best efforts to cause all Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies, authorities or self-regulatory bodies as may be necessary by virtue of the business and operations of the Company to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities in accordance with the intended method or methods of disposition thereof;

(g) furnish to each seller of Registrable Securities a signed counterpart, addressed to the sellers, of

(i) an opinion of outside counsel for the Company experienced in securities law matters, dated the effective date of the registration statement (or, if such registration includes an underwritten public offering, the date of the closing under the underwriting agreement), and

(ii) a "comfort" letter (unless the registration is pursuant to Section 2 and such a letter is not otherwise being furnished to the Company), dated the effective date of such registration statement (and if such registration includes an underwritten public offering, dated the date of the closing under the underwriting agreement), signed by the independent public accountants who have issued an audit report on the Company's financial statements included in the registration statement,

covering such matters as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in underwritten public offerings of securities, subject to such qualifications as are customary in opinions and accountants' letters delivered in such circumstances;

(h) notify each seller of any Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event or existence of any fact as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and, as promptly as is practicable, prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(i) otherwise comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement of the Company (in form complying with the provisions of Rule 158 under the Securities Act) covering the period of at least 12 months, but not more than 18 months, beginning with the first month after the effective date of such registration statement;

(j) notify each seller of any Registrable Securities covered by such registration statement (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed, and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission for amendments or supplements to such registration statement or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for that purpose and (iv) of the suspension of the qualification of such securities for offering or sale in any jurisdiction, or of the institution of any proceedings for any of such purposes;

(k) use every reasonable effort to obtain the lifting of any stop order that might be issued suspending the effectiveness of such registration statement as soon as practicable;

(l) use its reasonable best efforts (i) (A) to list such Registrable Securities on any securities exchange on which the equity securities of the Company are then listed or, if no such equity securities are then listed, on an exchange selected by the Company, if such listing is then permitted under the rules of such exchange, or (B) if such listing is not practicable, to secure designation of such securities as a NASDAQ "national market system security" within the meaning of Rule 11Aa2-1 under the Exchange Act or, failing that, to secure NASDAQ authorization for such Registrable Securities, and, without limiting the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with the NASD, and (ii) to provide a transfer agent and registrar for such Registrable Securities not later than the effective date of such registration statement and to instruct such transfer agent (A) to release any stop transfer order with respect to the certificates with respect to the Registrable Securities being sold and (B) to furnish certificates without restrictive legends representing ownership of the shares being sold, in such denominations requested by the sellers of the Registrable Securities or the lead underwriter;

(m) enter into such agreements and take such other actions as the sellers of Registrable Securities or the underwriters reasonably request in order to expedite or facilitate the disposition of such Registrable Securities, including, without limitation, preparing for, and participating in, such number of "road shows" and all such other customary selling efforts as the underwriters reasonably request in order to expedite or facilitate such disposition;

(n) furnish to any holder of such Registrable Securities such information and assistance as such holder may reasonably request in connection with any "due diligence" effort which such seller deems appropriate; and

(o) use its best efforts to take all other steps necessary to effect the registration of such Registrable Securities contemplated hereby.

As a condition to its registration of Registrable Securities of any prospective seller, the Company may require such seller of any Registrable Securities as to which any registration is being effected to furnish to the Company such information regarding such seller, its ownership of Registrable Securities and the disposition of such Registrable Securities as the Company may from time to time reasonably request in writing and as shall be required by law in connection therewith, together with such certificates, if any, as may be required to permit the delivery of the opinions and comfort letters contemplated by Section 3(g) and the execution of the underwriting agreement and the delivery of the documents required to be delivered thereunder. Each such holder agrees to furnish promptly to the Company all information required to be disclosed in

order to make the information previously furnished to the Company by such holder not materially misleading.

The Company agrees not to file or make any amendment to any registration statement with respect to any Registrable Securities, or any amendment of or supplement to the prospectus used in connection therewith, which refers to any seller of any Registrable Securities covered thereby by name, or otherwise identifies such seller as the holder of any Registrable Securities, without the consent of such seller, such consent not to be unreasonably withheld or delayed, unless such disclosure is required by law.

By acquisition of Registrable Securities, each holder of such Registrable Securities shall be deemed to have agreed that upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(h), such holder will promptly discontinue such holder's disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(h). If so directed by the Company, each holder of Registrable Securities will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, in such holder's possession of the prospectus covering such Registrable Securities at the time of receipt of such notice. In the event that the Company shall give any such notice, the period mentioned in Section 3(b) shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of any Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus contemplated by Section 3(h).

4. Underwritten Offerings.

4.1. Underwriting Agreement. If requested by the underwriters for any underwritten offering pursuant to a registration requested under Section 1.1 or 2, the Company shall enter into an underwriting agreement with the underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the underwriters and to CPII (if CPII is participating in such registration) and to the Majority Holders (if the MCM Holding Distributees are participating in such registration). Any such underwriting agreement shall contain such representations and warranties by the Company and such other terms and provisions as are customarily contained in agreements of this type, including, without limitation and unless waived by CPII (if CPII is participating in such registration) and the Majority Holders (if the MCM Holding Distibutees are participating in such registration), indemnities to the effect and to the extent provided in Section 9. The holders of Registrable Securities to be distributed by such underwriter shall be parties to such underwriting agreement and may, at their option,

require that any or all of the representations and warranties by, and the agreements on the part of, the Company to and for the benefit of such underwriters be made to and for the benefit of such holders of Registrable Securities and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement shall also be conditions precedent to the obligations of such holders of Registrable Securities. No underwriting agreement (or other agreement in connection with such offering) shall require any Stockholder, in its capacity as stockholder and/or controlling Person, to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such holder, the ownership of such holder's Registrable Securities and such holder's intended method or methods of disposition and any other representation required by law or to furnish any indemnity to any Person which is broader than the indemnity furnished by such holder pursuant to Section 9.2.

4.2. Selection of Underwriters. If the Company at any time proposes to register any of its securities under the Securities Act for sale for its own account pursuant to an underwritten offering in which holders of Registrable Securities are participants, the Company will have the right to select the managing underwriter (which shall be of nation ally recognized standing) to administer the offering, but if CPII or the MCM Holding Distributees at such time own at least 20% of the number of shares of Common Stock they own on the date hereof, only with the approval thereof, such approval not to be unreasonably withheld. Notwithstanding the foregoing sentence, whenever a registration requested pursuant to Section 1.1 is for an underwritten offering, the Requesting Party will have the right to select the managing underwriter (which shall be of nationally recognized standing) to administer the offering, but only with the approval of the Company, such approval not to be unreasonably withheld.

5. Holdback Agreements. (a) If and whenever the Company proposes to register any of its equity securities under the Securities Act for its own account (other than on Form S-4 or S-8 or any successor form) or is required to use its best efforts to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 1.1 or 2, each holder of Registrable Securities agrees by acquisition of such Registrable Securities not to request registration under Section 1.1 of any Registrable Securities and, if it is then an officer, director or the beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of more than 5% of any class of the Company's equity securities (or any securities convertible into or exchangeable or exercisable for any of such securities), not to effect any public sale or distribution of the Company's equity securities (other than pursuant to such registration), within seven days prior to and 90 days (unless advised in writing by the managing underwriter that a longer period, not to exceed 180 days, is required, or such shorter period as the managing

underwriter for any underwritten offering may agree) after the effective date of the registration statement relating to such registration, except as part of such registration.

(b) The Company agrees not to effect any public sale or distribution of its equity securities or securities convertible into or exchangeable or exercisable for any of such securities within seven days prior to and 90 days (unless advised in writing by the managing underwriter that a longer period, not to exceed 180 days, is required, or such shorter period as the managing underwriter for any underwritten offering may agree) after the effective date of any registration statement filed pursuant to Section 1.1 (except as part of such registration or pursuant to a registration on Form S-4 or S-8 or any successor form). In addition, upon the request of the managing underwriter, the Company shall use its reasonable best efforts to cause each officer, director or beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of more than 5% of any class of the Company's equity securities (or any securities convertible into or exchangeable or exercisable for any of such securities), other than any such securities acquired in a public offering, to agree not to effect any such public sale or distribution of such securities during such period, except as part of any such registration if permitted, and to cause each such officer, director and beneficial holder to enter into a similar agreement to such effect with the Company.

6. Preparation; Reasonable Investigation. In connection with the preparation and filing of each registration statement registering Registrable Securities under the Securities Act, the Company will give the holders of such Registrable Securities so to be registered and their underwriters, if any, and their respective counsel and accountants the opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the Commission, and each amendment thereof or supplement thereto, and will give each of them such access to the financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have issued audit reports on its financial statements as shall be reasonably requested by such holders in connection with such registration statement.

7. No Grant of Future Registration Rights. The Company shall not grant to any Person (a) any other demand or incidental registration rights to without the prior written consent of the MCM Holding Distributees Majority and CPII, so long as the MCM Holding Distributees (as a group) and CPII, respectively, continue to own at least 10% of the number of shares of Common Stock owned thereby (or, in the case of the MCM Holding Distributees, owned by MCM Holding), respectively, on the date hereof and (b) any incidental registration rights that are of a higher priority to the rights granted

to the holders of Registrable Securities under Section 2 hereof during the term of this Agreement.

8. [Reserved]

9. Indemnification.

9.1. Indemnification by the Company. In the event of any registration of any Registrable Securities pursuant to this Agreement (including, without limitation, any registration of Registrable Securities as part of any IPO by the Company closing on or after the date of this Agreement), the Company agrees to indemnify, defend and hold harmless (a) each seller of such Registrable Securities, (b) the directors, members, stockholders, officers, partners, employees, agents and Affiliates of such seller, (c) each Person who participates as an underwriter in the offering or sale of such securities and (d) each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) any of the foregoing against any and all losses, claims, damages, expenses or other liabilities (or actions or proceedings in respect thereof), jointly or severally, directly or indirectly, based upon or arising out of (i) any untrue statement or alleged untrue statement of a fact contained in any registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained therein or used in connection with the offering of securities covered thereby, or any amendment or supple ment thereto, or (ii) any omission or alleged omission to state a fact required to be stated therein or necessary to make the statements therein not misleading; and the Company will reimburse each such indemnified party for any legal or any other expenses reasonably incurred by them in connection with enforcing its rights hereunder or under the underwriting agreement entered into in connection with such offering or investigating, preparing, pursuing or defending any such loss, claim, damage, liability, action or proceeding, except insofar as any such loss, claim, damage, liability, action, proceeding or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by such seller expressly for use in the preparation thereof, or (B) any preliminary prospectus to the extent that any such loss, claim, damage, liability, action or proceeding results solely from the fact that the seller sold Registrable Securities to a person as to whom the Company shall establish that there was not sent by commercially reasonable means, at or prior to the written confirmation of such sale, a copy of the final prospectus in any case where such delivery is required by the Securities Act, if the Company has previously furnished copies thereof in sufficient quantity to the seller or the underwriters for such offering and the loss, claim, damage, liability, action or proceeding results from an untrue statement or omission of a material

fact contained in the preliminary prospectus that was corrected in the final prospectus. Such indemnity shall remain in full force and effect, regardless of any investigation made by such indemnified party and shall survive the transfer of such Registrable Securities by such seller. If the Company is entitled to, and does, assume the defense of the related action or proceedings provided herein, then the indemnity agreement contained in this Section 9.1 shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or proceeding if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld or delayed). The Company shall also indemnify any underwriters of the Registrable Securities, their officers, directors and employees, and each person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) to the same extent as provided above with respect to indemnification of the seller of Registrable Securities.

9.2. Indemnification by the Sellers. The Company may require, as a condition to including any Registrable Securities in any registration statement filed pursuant to Section 1.1 or 2 that the Company shall have received an undertaking reasonably satisfactory to it from each of the prospective sellers of such Registrable Securities to indemnify and hold harmless, severally, not jointly, in the same manner and to the same extent as set forth in Section 9.1, the Company, its directors, officers, employees, agents and each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company, but only with respect to any written information furnished to the Company by such seller expressly for use in the preparation of such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement. (The Company and the holders of the Registrable Securities hereby acknowledge and agree that, unless otherwise expressly agreed to in writing by such holders, the only information furnished or to be furnished to the Company for use in any registration statement or prospectus relating to the Registrable Securities or in any amendment, supplement or preliminary materials associated therewith are statements specifically relating to (a) transactions between such holder and its Affiliates, on the one hand, and the Company, on the other hand, (b) the beneficial ownership of shares of Common Stock by such holder and its Affiliates and (c) the name and address of such holder. If any additional information about such holder or the plan of distribution (other than for an underwritten offering) is required by law to be disclosed in any such document, then such holder shall not unreasonably withhold its agreement referred to in the immediately preceding sentence of this Section 9.2.) Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling Person and shall survive the transfer of such Registrable Securities by such seller. The indemnity agreement contained in this Section 9.2 shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or proceeding if such settlement is effected without the consent of such seller (which consent shall not be unreasonably withheld or

delayed). The indemnity provided by each seller of Registrable Securities under this Section 9.2 shall be limited in amount to the net amount of proceeds actually received by such seller from the sale of Registrable Securities pursuant to such registration statement giving rise to such liability.

9.3. Notices of Claims, etc. Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in the preceding paragraphs of this Section 9, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the indemnifying party of the commencement of such action or proceeding, provided that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 9, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party will be entitled to participate therein and to assume the defense thereof, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof except for the reasonable fees and expenses of any counsel retained by such indemnified party to monitor such action or proceeding. Notwithstanding the foregoing, if such indemnified party reasonably determines, based upon advice of independent counsel, that either a conflict of interest may exist between the indemnified party and the indemnifying party with respect to such action and that it is advisable for such indemnified party to be represented by separate counsel or that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnifying party, such indemnified party may retain other counsel, reasonably satisfactory to the indemnifying party, to represent such indemnified party, and the indemnifying party shall pay all reasonable fees and expenses of such counsel. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of such indemnified party, which consent shall not be unreasonably withheld, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The rights accorded to any indemnified party hereunder shall be in addition to any rights that such indemnified party may have at common law, by separate agreement or otherwise.

9.4. Other Indemnification. Indemnification similar to that specified in the preceding paragraphs of this Section 9 (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required

registration (other than under the Securities Act) or other qualification of such Registrable Securities under any federal or state law or regulation of any governmental authority.

9.5. Indemnification Payments. Any indemnification required to be made by an indemnifying party pursuant to this Section 9 shall be made by periodic payments to the indemnified party during the course of the action or proceeding, as and when bills are received by such indemnifying party with respect to an indemnifiable loss, claim, damage, liability or expense incurred by such indemnified party.

9.6. Other Remedies. If for any reason the foregoing indemnity is unavailable, or is insufficient to hold harmless an indemnified party, other than by reason of the exceptions provided therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities, actions, proceedings or expenses in such proportion as is appropriate to reflect the relative benefits to and faults of the indemnifying party on the one hand and the indemnified party on the other in connection with the offering of Registrable Securities and the statements or omissions or alleged statements or omissions which resulted in such loss, claim, damage, liability, action, proceeding or expense, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statements or omissions. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. No party shall be liable for contribution under this Section 9.6 except to the extent as such party would have been liable to indemnify under this Section 9 if such indemnification were enforceable under applicable law.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 9.6 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph.

10. Representations and Warranties. Each Stockholder, severally and not jointly, represents and warrants to the Company and each other Stockholder that:

(i) such Stockholder has the power, authority and capacity (or, in the case of any Stockholder that is a corporation or limited partnership, all corporate or limited

partnership power and authority, as the case may be) to execute, deliver and perform this Agreement;

(ii) in the case of a Stockholder that is a corporation or limited partnership, the execution, delivery and performance of this Agreement by such Stockholder has been duly and validly authorized and approved by all necessary corporate or limited partnership action, as the case may be;

(iii) this Agreement has been duly and validly executed and delivered by such Stockholder and constitutes a valid and legally binding obligation of such Stock holder, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally and general principles of equity; and

(iv) the execution, delivery and performance of this Agreement by such Stockholder does not and will not violate the terms of or result in the acceleration of any obligation under (A) any material contract, commitment or other material instrument to which such Stockholder is a party or by which such Stockholder is bound, (B) in the case of a Stockholder that is a corporation or limited partnership, the certificate of incorporation, certificate of limited partnership, by-laws or limited partnership agreement, as the case may be, or (C) any law, statute, regulation, order or decree applicable to such Stockholder.

11. Definitions. For purposes of this Agreement, the following terms shall have the following respective meanings:

Affiliate: (i) with respect to any Person, a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and (ii) with respect to any natural Person, (A) the spouse, parents and direct descendants of such Person, (B) the estate, testamentary trust, trustees, executors, administrators, legatees or testamentary beneficiaries of such Person, and (C) any trust established by such Person for the exclusive benefit of any of the foregoing Persons.

Affiliated Stockholder: with respect to CPII, MCM Holding, and the MCM Holding Distributees, each of their respective Affiliates, in each case, if and so long as it owns any Registrable Securities and has agreed in writing to be bound by the terms and conditions of this Agreement, a copy of which agreement shall have been delivered to the Company.

Board: the board of directors of the Company.

Commission: the Securities and Exchange Commission.

Common Stock: the Common Stock of the Company, par value $.01 per share, and any securities into which such Common Stock shall have been changed or any securities resulting from any reclassification of such Common Stock.

Exchange Act: the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations thereunder which shall be in effect at the time.

IPO: the initial public offering of Common Stock.

Majority Holders: as defined in Section 3(c).

MCM Holding Distributees Majority: at any time, the owners of at least 51% of the Registrable Securities then owned by the MCM Holding Distributees.

NASD: National Association of Securities Dealers, Inc.

NASDAQ: the Nasdaq National Market.

Permitted Transferee: as defined in Section 12.2.

Person: an individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Registrable Securities: the shares of Common Stock beneficially owned (within the meaning of Rule 13d-3 of the Exchange Act) by CPII, MCM Holding, the MCM Holding Distributees or the Permitted Transferees. As to any particular shares of Common Stock, such securities shall cease to be Registrable Securities when (i) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) they shall have been sold to the public pursuant to Rule 144 under the Securities Act, (iii) they shall have been otherwise transferred other than to a Permitted Transferee and subsequent disposition of them shall not require registration or qualification of them under the Securities Act or any similar state law then in force or (iv) they shall have ceased to be outstanding.

Registration Expenses: all expenses incident to the Company's performance of or compliance with any registration pursuant to this Agreement, including, without limitation, (i) registration, filing and NASD fees, (ii) fees and expenses of complying with securities or blue sky laws, (iii) fees and expenses associated with listing securities on an exchange or NASDAQ, (iv) word processing, duplicating and printing expenses, (v) messenger and delivery expenses, (vi) transfer agents', trustees', depositories', registrars' and fiscal agents' fees, (vii) fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of any special audits or "cold comfort" letters, (viii) reasonable fees and disbursements of any one counsel retained by the sellers of Registrable Securities, which counsel shall be designated in the manner specified in Section 3 and (ix) any fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding underwriting discounts and commissions and transfer taxes, if any.

Securities Act: the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder which shall be in effect at the time.

Stockholders: (i) CPII, MCM Holding and each MCM Holding Distributee, in each case, if and so long as it owns any Registrable Securities and (ii) each Affiliated Stockholder.

12. Miscellaneous.

12.1. Rule 144, etc. If the Company shall have filed a registration state ment pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act relating to any class of securities, the Company will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission there under, and will take such further action as any holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 under the Securities Act, as such rule may be amended from time to time or (b) any successor rule or regulation hereafter adopted by the Commission. Upon the request of any holder of Registrable Securities, the Company will deliver to such holder a written statement as to whether it has complied with such requirements.

12.2. Successors, Assigns and Transferees. This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and permitted assigns under this Section 12.2. Provided that an express assignment shall

have been made, a copy of which shall have been delivered to the Company, the provisions of this Agreement which are for the benefit of a holder of Registrable Securities shall be for the benefit of and enforceable by any subsequent holder of any Registrable Securities ("PERMITTED TRANSFEREES"), subject to the provisions respecting the minimum numbers or percentages of shares of Registrable Securities required in order to be entitled to certain rights, or to take certain actions, contained herein.

12.3. Amendment and Modification. This Agreement may be amended, modified or supplemented by the Company with the written consent of CPII, the MCM Holding Distributees Majority and a majority (by number of shares) of any other holder of Registrable Securities whose interests would be adversely affected by such amendment in a manner different from the effect thereof on other Registered Securities, provided that all Stockholders shall be notified of such amendment, modification or supplement.

12.4. Governing Law. This Agreement and the rights and obligations of the parties hereunder and the persons subject hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York, without giving effect to the choice of law principles thereof.

12.5. Invalidity of Provision. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, in any other jurisdiction.

12.6. Notices. All notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax, as follows:

(i) If to the Company, to it at:

MCM Capital Group, Inc.
500 West First Street
Hutchinson, Kansas 67501-5222
Attention: Chief Executive Officer
Telecopier No.: (316) 665-0140

with a copy to:

MCM Capital Group, Inc.

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500 West First Street
Hutchinson, Kansas 67501-5222
Attention: General Counsel
Telecopier No.: (316) 665-0140

and a copy to:

Snell & Wilmer
One Arizona Center
Phoenix, Arizona 85004-0001
Attention: Steven D. Pidgeon
Telecopier No.: (602) 382-6070

(ii) If to CPII, to it at:

C.P. International Investments Limited
2nd Floor, Block A, Russell Court
St. Stephen's Green
Dublin 2, Ireland
Attention: Managing Director
Telecopier No.: (011) (353) 475-6605

with a copy to:

Consolidated Press Holdings Limited
54-58 Park Street
Sydney, NSW 2000
Australia
Attention: Corporate Secretary
Telecopier No.: (011) (61) (2) 9267-2150

and a copy to

Debevoise & Plimpton
875 Third Avenue
New York, New York 10022
Attention: John M. Allen, Jr.
Telecopier No.: (212) 909-6836

(iii) If to MCM Holding or any MCM Holding Distributee, to it at:

c/o Triarc Companies, Inc.
280 Park Avenue
New York, NY 10017
Attention: General Counsel
Telecopier No.: (212) 451-3216

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
Attention: Neale Albert, Esq. And Paul Ginsberg, Esq.
Telecopier No.: (212) 757-3990

or to such other person or address as any party shall specify by notice in writing to the Company. All such notices, requests, demands, letters, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day after such delivery, (x) if by certified or registered mail, on the eighth business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered or (z) if by fax, on the next day following the day on which such fax was sent, provided that a copy is also sent by certified or registered mail.

12.7. Headings; Execution in Counterparts. The headings and captions contained herein are for convenience and shall not control or affect the meaning or construction of any provision hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

12.8. Injunctive Relief. Each of the parties recognizes and agrees that money damages may be insufficient and, therefore, in the event of a breach of any provision of this Agreement the aggrieved party may elect to institute and prosecute proceedings in any court of competent jurisdiction to enforce specific performance or to enjoin the continuing breach of this Agreement. Such remedies shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which such party may have.

12.9. Term. This Agreement shall be effective as of the date hereof and shall continue in effect thereafter until the earlier of (a) its termination by the consent of the parties hereto or their respective successors in interest, (b) the date on which no Registrable Securities remain outstanding, and (c) the date on which the Requesting Parties have collectively exhausted their respective rights to request registrations under Section 1.1 and all remaining Registrable Securities are subject to immediate resale by

the holder thereof without regard to volume limitation pursuant to paragraph (k) of Rule 144 under the Securities Act; provided, that after the date on which the Requesting Parties have collectively exhausted their respective rights to request registrations under Section 1.1, the rights and obligations under this Agreement of any individual holder of Registrable Securities shall terminate if and when all of such holder's Registrable Securities are subject to immediate resale without regard to volume limitation pursuant to paragraph (k) of Rule 144 under the Securities Act.

12.10. Further Assurances. Subject to the specific terms of this Agreement, each of the Company and the Stockholders shall make, execute, acknowledge and deliver such other instruments and documents, and take all such other actions, as may be reasonably required in order to effectuate the purposes of this Agreement and to consummate the transactions contemplated hereby.

12.11. Entire Agreement. This Agreement is intended by the parties hereto as a final expression of their agreement and intended to be a complete and exclusive statement of their agreement and understanding in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF this Agreement has been signed by each of the parties hereto, and shall be effective as of the date first above written.

MCM CAPITAL GROUP, INC.

By: /s/ Frank Chandler

Name: Frank Chandler
Title: President

MCM HOLDING COMPANY LLC

By: /s/ Eric D. Kogan

Name: Eric D. Kogan
Title: Manager

C.P. INTERNATIONAL INVESTMENTS LIMITED

By: /s/ John Willinge

Name: John Willinge
Title: Executive Director and
Attorney-in-Fact

SCHEDULE A

MCM HOLDING DISTRIBUTEES

See Attached List For Names

MCM CAPITAL GROUP, INC.
OWNERSHIP SCHEDULE

Madison West Associates Corp.

Nelson Peltz Children's Trust

Jonathan P. May 1998 Trust

Leslie A. May 1998 Trust

Eric D. Kogan

Edward Garden

John L. Barnes, Jr.

JPAH Holdings, LLC

Brian L. Schorr

Stuart I. Rosen

James A. Knight

Alex Lemond

EXHIBIT 10.6

SUBSIDIARY GUARANTY

THIS GUARANTY AGREEMENT, dated as of January 12, 2000 (this "Guaranty"), by and among Midland Credit Management, Inc., a Kansas corporation (the "Initial Subsidiary Guarantor"), and each other Subsidiary (such and all other capitalized terms being used herein with the meaning set forth in Article I) of MCM CAPITAL GROUP, INC., a Delaware corporation (the "Company"), which from time to time in accordance with Section 6.1.6 of the Note Purchase Agreement becomes a signatory hereto (each, an "Additional Subsidiary Guarantor" and, collectively with the Initial Subsidiary Guarantor, a "Subsidiary Guarantor") and ING (U.S.) Capital LLC (the "Purchaser"), for the benefit of itself and its nominees.

W I T N E S S E T H:

WHEREAS, pursuant to a note purchase agreement, dated as of January 12, 2000 (together with all amendments and other modifications, if any, from time to time thereafter made thereto, the "Note Purchase Agreement"), between the Company and the Purchaser, the Company obtained $10,000,000 in cash representing the proceeds from the sale by the Company to the Purchaser of the Series No. 1 Notes for a purchase price of $10,000,000 and Warrants for the purchase of Common Shares for consideration of $10.00; and

WHEREAS, each Subsidiary Guarantor has, in consideration of, among other things, receiving such capital contribution and the benefits of such economies, synergies and financing, duly authorized the execution, delivery and performance of this Guaranty;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, each Subsidiary Guarantor hereby agrees as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Certain Terms. Except as otherwise provided herein or as the context otherwise requires, the following terms (whether or not italicized) when used in this Guaranty shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Additional Subsidiary Guarantor" is defined in the preamble.

"Company" is defined in the preamble.

"Guaranty" is defined in the preamble.

"Initial Subsidiary Guarantor" is defined in the preamble.

"Series No. 1 Note" means each Series No. 1 Note executed and delivered pursuant to the Note Purchase Agreement all amendments, endorsements and other modifications made from time to time to

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such notes and each other promissory notes accepted from time to time in substitution, replacement or renewal of such notes.

"Note Purchase Agreement" is defined in the second recital.

"Purchaser" is defined in the preamble.

"Subsidiary Guarantor" is defined in the preamble.

SECTION 1.2. Note Purchase Agreement Terms. Except as otherwise provided herein or as the context otherwise requires, terms for which meanings are provided in the Note Purchase Agreement shall have the same meanings when used in this Guaranty.

ARTICLE II

GUARANTY

SECTION 2.1. Guaranty of Payment. Each Subsidiary Guarantor hereby absolutely, unconditionally and irrevocably guarantees the full and prompt payment and performance on demand and all times thereafter of all Obligations.

SECTION 2.2. Indemnification. Each Subsidiary Guarantor also agrees to reimburse the Purchaser and the Noteholders, promptly after receipt of written notice by the Purchaser or any Noteholder demanding such payment, for all out-of-pocket costs and expenses, including reasonable attorneys' fees and disbursements, which the Purchaser expends or incurs in collecting, compromising or enforcing this Guaranty, whether or not suit is filed, expressly including all out-of-pocket costs, expenses, reasonable attorneys' fees and other charges incurred in connection with any insolvency, bankruptcy, reorganization, liquidation, dissolution, arrangement or other similar proceedings involving any Subsidiary Guarantor which in any way affect the exercise of rights, powers, remedies and privileges with respect to this Guaranty or the interest accrued and unpaid on the outstanding principal amount of the Series No. 1 Notes.

SECTION 2.3. Obligations Absolute, Unconditional, etc. Each Subsidiary Guarantor agrees that its obligations hereunder shall be absolute, unconditional and irrevocable, irrespective of the genuineness, validity, legality or enforceability of the Obligations, the Series No. 1 Notes, the Note Purchase Agreement or any other Purchase Document, or any other Instrument or collateral relating to or securing the payment, performance or observance thereof or any other circumstance which could otherwise constitute a legal or equitable discharge of a surety or guarantor, and the Purchaser may, in its discretion or at the direction of the Required Noteholders, proceed to enforce this Guaranty in respect of any Obligations as and to the extent provided in Section 2.1 and Section 2.2. Neither the Purchaser nor any other Noteholder shall have any obligation to protect, secure, perfect or insure any collateral security document or property subject thereto at any time held as security for the Obligations or this Guaranty. Except as herein otherwise expressly provided, each Subsidiary Guarantor hereby absolutely, unconditionally and irrevocably waives, to the fullest extent permitted by applicable law, and agrees not to assert or take advantage of:

(a) any right to require the Purchaser or any other Noteholder to proceed against the Company or any other Person, or to proceed against or exhaust any other security or collateral for

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the payment, performance or observance of the Obligations, or to pursue any other remedy whatsoever before proceeding against any Subsidiary Guarantor hereunder;

(b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any Person, or the failure of the Purchaser or any other Noteholder to file or enforce a claim against any estate (in administration, bankruptcy or any other proceedings) of any Person;

(c) any defense based upon an election of remedies by the Purchaser or any other Noteholder, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or impairs any right of subrogation of any Subsidiary Guarantor or the right of any Subsidiary Guarantor to proceed against the Company or any other Person for reimbursement or both;

(d) any other defense of the Company, or the cessation of the liability of the Company for any cause whatsoever, with respect to any Obligations;

(e) any other defense of any kind, whether now existing or arising hereafter, of any Subsidiary Guarantor to any action, suit or judicial or legal proceeding that may be instituted with respect to this Guaranty;

(f) presentment, demand, protest and notice of any kind, including notice of the creation or non-payment or non-performance of all or any Obligations, notice of dishonor or protest, notice of acceptance by the Purchaser, its nominees or any other Noteholder of this Guaranty, notice of the existence, creation or incurrence of any new or additional indebtedness, obligation or other liability, and notice of action or non-action on the part of the Purchaser or any other Noteholder, the Company or any Subsidiary Guarantor or any other Person in connection with the Obligations or otherwise; and

(g) any duty on the part of the Purchaser or any other Noteholder or other Person to disclose to the Subsidiary Guarantors any facts or information any such Person may now or hereafter know or possess regarding the Company, the Obligations or any other matter whatsoever, regardless of whether such Person has reason to believe that such facts or other information may materially increase the risk which any Subsidiary Guarantor intends to assume or has reason to believe that such facts or other information are unknown to the Subsidiary Guarantors or has a reasonable opportunity to communicate such facts or other information, it being understood and agreed that each Subsidiary Guarantor is fully and solely responsible for being and keeping informed of the financial condition of the Company and of all other circumstances bearing on the risk of non-payment of any Obligations.

This Guaranty shall in all respects be a continuing, absolute, unconditional and irrevocable Guaranty of payment, and shall remain in full force and effect until all Obligations have been fully paid, and may not be amended, modified or supplemented except in accordance with Section 8.1 of the Note Purchase Agreement. This Guaranty shall continue to be effective, or to be reinstated, as the case may be, if at any time any payment, in whole or in part, of any Obligations is rescinded or must otherwise be restored or returned by the Purchaser, its nominees or any other Noteholder upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Subsidiary Guarantor or the Company, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to any Subsidiary Guarantor or the Company or any part of either of its property, or otherwise, all as though such payments had never been made.

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SECTION 2.4. Waiver of All Defenses. Except as otherwise specified herein, the Purchaser or any or each Noteholder may, from time to time, in its sole discretion and without notice to the Subsidiary Guarantors, take any or all of the following actions, all without in any way diminishing, impairing, releasing or affecting the liability or obligations of the Subsidiary Guarantor under or with respect to this Guaranty, and each Subsidiary Guarantor hereby irrevocably consents to any or all of the following actions by the Purchaser and each other Noteholder:

(a) retain or obtain a Lien in any property to secure any Obligation or any obligation hereunder;

(b) retain or obtain the primary or secondary obligations with respect to any Obligation;

(c) extend or renew for one or more periods (whether or not longer than the original period), or alter or exchange, any Obligation, or release or compromise any obligation of any Subsidiary Guarantor hereunder or any obligation of any nature of any other Person with respect to any Obligation or amend or modify in any respect the Note Purchase Agreement or any Purchase Document;

(d) waive, modify, subordinate, compromise or release its Lien in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any Obligation or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or waive, release, subordinate, compromise, modify, alter or exchange any guaranty or other obligations of any nature of any obligor with respect to any such property; and

(e) resort to any Subsidiary Guarantor for payment of any Obligation, whether or not the Purchaser or any other Noteholder shall have resorted to or exhausted any other remedy or any other security or collateral for any obligation hereunder or shall have proceeded against the Company or any other Person primarily or secondarily obligated with respect to any Obligation.

Each Subsidiary Guarantor absolutely, unconditionally and irrevocably agrees that, as long as any Obligation has not been paid in full, no Subsidiary Guarantor shall have or enforce any right of subrogation, and each Subsidiary Guarantor waives any right to enforce any remedy which the Purchaser or any other Noteholder now has or may hereafter have against the Company or any other Person hereunder or pursuant hereto or under or pursuant to the Note Purchase Agreement, the Series No. 1 Notes or any other Purchase Document, and any benefit of, and any right to participate in, any security for any Obligation now or hereafter held by the Purchaser or any other Noteholder, as the case may be.

Each Subsidiary Guarantor absolutely, unconditionally and irrevocably agrees that the liability of each Subsidiary Guarantor hereunder, and the remedies for the enforcement of such liability, shall in no way be diminished or affected by:

(a) the release or discharge of the Company or any other Person responsible for the payment, performance or observance of any Obligation in any creditors', receivership, bankruptcy, reorganization, insolvency or other proceeding;

(b) the rejection or disaffirmance in any such proceeding of any Instrument evidencing, securing, or executed in connection with, any Obligation; or

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(c) the impairment, limitation or modification of any Obligation resulting from the operation of any present or future provision of the federal bankruptcy code or any other Applicable Law.

Each Subsidiary Guarantor absolutely, unconditionally and irrevocably further agrees that the creation from time to time of any Obligation and the application or allocation of amounts received by the Purchaser or any Noteholder or any other Person to the payment of such Obligation, and the creation, existence or enforcement from time to time of any security for the Obligation, and the application and allocation of the proceeds of such security, shall in no way affect or impair the rights, remedies, powers and privileges of the Purchaser or any other Noteholder or the holder of any Series No. 1 Note or the obligation of any Subsidiary Guarantor under this Guaranty.

Each Subsidiary Guarantor hereby expressly waives notice of the creation of all Obligations and all diligence in collection or protection of or realization upon the Obligations or any thereof, any obligation hereunder, or any security for or guaranty of any of the foregoing.

ARTICLE III

MISCELLANEOUS

SECTION 3.1. Purchase Document. This Guaranty is a Purchase Document for purposes of the Note Purchase Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article VIII thereof.

SECTION 3.2. Successors and Assigns; Assignment. This Guaranty shall be binding upon each Subsidiary Guarantor and its successors and assigns and shall inure to the benefit of the Purchaser and each other Noteholder and their respective successors and assigns, including any assignee of any Series No. 1 Note and be enforceable by the Purchaser at the direction of the Required Noteholders; provided, however, that no Subsidiary Guarantor may assign any of its obligations hereunder without the prior written consent of all Noteholders. Each Noteholder may, subject, however, to the provisions of Section 4.7 of the Note Purchase Agreement, from time to time, without notice to the Subsidiary Guarantors assign or transfer any Series No. 1 Note or any interest therein, and, notwithstanding any such transfer or assignment or any subsequent transfer or assignment thereof, such Series No. 1 Note shall be and remain a Series No. 1 Note for purposes of this Guaranty, and each and every immediate and successive transferee or assignee of any Series No. 1 Note or any interest therein shall, to the extent of the interest of such transferee or assignee in the Series No. 1 Note, be entitled to the benefits of this Guaranty.

IN WITNESS WHEREOF, the Initial Subsidiary Guarantor has caused this Guaranty to be executed and delivered by its Authorized Officer as of the date first above written.

MIDLAND CREDIT MANAGEMENT, INC.

By: /s/ R. Brooks Sherman
Name: R. Brooks Sherman
Title: Executive Vice President

EXHIBIT 10.7

[EXECUTION COPY]

GUARANTY AND OPTION AGREEMENT

THIS GUARANTY AND OPTION AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Guaranty"), dated as of January 12, 2000, is made by TRIARC COMPANIES, INC., a Delaware corporation (the "Guarantor"), in favor of ING (U.S.) CAPITAL LLC (together with its successors and assigns, "ING").

W I T N E S S E T H:

WHEREAS, pursuant to a Note Purchase Agreement, dated as of January 12, 2000 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Note Purchase Agreement"), between MCM Capital Group, Inc., a Delaware corporation (the "Company") and ING, ING has purchased the Series No. 1 Notes from the Company;

WHEREAS, the Guarantor owns an equity interest in the Company;

WHEREAS, as a condition precedent to the purchase of the Series No. 1 Notes under the Note Purchase Agreement, the Guarantor is required to execute and deliver this Guaranty;

WHEREAS, the Guarantor has duly authorized the execution, delivery and performance of this Guaranty; and

WHEREAS, it is in the best interests of the Guarantor to execute this Guaranty inasmuch as the Guarantor will derive substantial direct and indirect benefits from the purchase of the Series No. 1 Notes from the Company by ING pursuant to the Note Purchase Agreement and the execution and delivery of the Warrant Agreement between the Company and ING;

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, and in order to induce ING to purchase the Series No. 1 Notes from the Company, and to induce ING to enter into the Note Purchase Agreement and the Warrant Agreement, the Guarantor agrees, for the benefit of ING, as follows.

ARTICLE I
DEFINITIONS

SECTION 1.1. Certain Terms. The following terms (whether or not underscored) when used in this Guaranty, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Applicable Fees" means, with respect to any Eligible Transaction, the aggregate amount of compensation (net of syndication fees, underwriting commissions or similar fees) actually paid by a Triarc Party to the Lead Banker in such Eligible Transaction.

"Company" is defined in the first recital.

"CPH Party" means Consolidated Press Holdings Ltd. or any of its Affiliates.

"Eligible Transaction" means a single transaction to which a Triarc Party is a party:

(a) in any line of business in which ING is then active;

(b) in which ING was offered, but declined, the right (i) to be the Lead Banker and (ii) to receive at least 40% of any Applicable Fees paid to such Lead Banker;

(c) in which a nationally recognized investment banking firm other than ING was engaged to be the Lead Banker;

(d) in which the terms on which the Lead Banker is engaged are substantially the same as those offered to ING; and

(e) in which the aggregate amount of Applicable Fees is greater than $1,000,000.

"Guaranteed Obligations" is defined in Section 2.1(a).

"Guarantor" is defined in the preamble.

"Guaranty" is defined in the preamble.

"ING" is defined in the preamble.

"Lead Banker" means, with respect to any Eligible Transaction, the lead or co-lead investment banking firm or firms involved in arranging, underwriting or providing investment banking or financial advisory services in connection with such Eligible Transaction.

"Material Role" means, with respect to any transaction (including but not limited to any Eligible Transaction), that in connection with such transaction, ING (a) acts as the lead underwriter, arranger or similar position, (b) acts as the co-lead underwriter, arranger or similar position, or (c) receives 20% or more of the aggregate compensation paid by Triarc Parties and all CPH Parties in connection with the underwriting or arranging of such transaction.

"Note Purchase Agreement" is defined in the first recital.

"Stockholders Agreement" means that certain Stockholders Agreement, dated as of January 12, 2000, by and among the Company, ING, and the other parties identified on the signature pages thereto.

"Triarc Change of Control" means the acquisition by any Person or group (other than either of Nelson Peltz or Peter W. May or any of their respective Affiliates (including members of their immediate families) or any trusts or estates of which either is a primary beneficiary or any entity of which either of them hold a majority of the Voting Stock, or any combination of the foregoing) of a direct or indirect majority in interest (more than 50%) of the issued and outstanding Voting Stock of the Guarantor by merger or consolidation or otherwise.

"Triarc Party" means the Guarantor, the Company or any of their respective Affiliates.

SECTION 1.2. Note Purchase Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Guaranty, including its preamble and recitals, have the meanings provided in the Note Purchase Agreement.

ARTICLE II
GUARANTY PROVISIONS

SECTION 2.1. Guaranty. Subject to Section 2.9, the Guarantor hereby absolutely, unconditionally and irrevocably

(a) guarantees the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of $10,000,000 of the principal amount of the Series No. 1 Notes (excluding any PIK Notes but including all such principal amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. Section 362(a), and the operation of Sections 502(b) and 506(b) of the United States Bankruptcy Code, 11 U.S.C. Section 502(b) and Section 506(b)) (the "Guaranteed Obligations"); and

(b) indemnifies and holds harmless ING for any and all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by ING in enforcing any rights under this Guaranty;

provided, however, that the Guarantor shall only be liable under this Guaranty for the maximum amount of such liability that can be hereby incurred without rendering this Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount. This Guaranty constitutes a guaranty of payment when due and not of collection, and the Guarantor specifically agrees that it

shall not be necessary or required that ING exercise any right, assert any claim or demand or enforce any remedy whatsoever against the Company, any other Obligor or any other Person before or as a condition to the obligations of the Guarantor hereunder.

SECTION 2.2. Reinstatement, etc. The Guarantor hereby agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Guaranteed Obligations is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be restored by any Noteholder, upon the insolvency, bankruptcy, reorganization (or similar event) of the Company, any other Obligor or otherwise, all as though such payment had not been made.

SECTION 2.3. Guaranty Absolute, etc. This Guaranty shall in all respects be a continuing, absolute, unconditional and irrevocable guaranty of payment, and shall remain in full force and effect until the payment in full of the Guaranteed Obligations (subject, however, to Section 8.5 of the Note Purchase Agreement). The Guarantor guarantees that the Guaranteed Obligations of the Company and each other Obligor will be paid strictly in accordance with the terms of the Note Purchase Agreement and each other Purchase Document under which they arise, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Noteholder with respect thereto. The liability of the Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(a) any lack of validity, legality or enforceability of the Note Purchase Agreement or any other Purchase Document;

(b) the failure of any Noteholder to assert any claim or demand or to enforce any right or remedy against the Company, any other Obligor or any other Person (including any other guarantor) under the provisions of the Note Purchase Agreement, any other Purchase Document or otherwise, or to exercise any right or remedy against any other guarantor (including the Guarantor) of, or collateral securing, any Guaranteed Obligations;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Guaranteed Obligations, or any other extension, compromise or renewal of any Guaranteed Obligation;

(d) any reduction, limitation, impairment or termination of any Guaranteed Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and the Guarantor hereby waives any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, irregularity, compromise or unenforceability of, or any other event or occurrence affecting, any Guaranteed Obligations or otherwise;

(e) any amendment to, rescission, waiver or other modification of, or any consent to or departure from, any of the terms of the Note Purchase Agreement or any other Purchase Document;

(f) any addition, exchange, release, surrender or non-perfection of any collateral, or any amendment to or waiver or release or addition of, or consent to or departure from, any other guaranty held by any Noteholder securing any of the Guaranteed Obligations; or

(g) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Company, any other Obligor, any surety or any guarantor.

SECTION 2.4. No Demand. Notwithstanding any provision in this Guaranty to the contrary, no claim or demand shall be made under this Guaranty prior to July 12, 2001, and the Guarantor shall have no obligation to make any payment under this Guaranty, and shall suffer no liability for any Guaranteed Obligation, prior to any such claim or demand.

SECTION 2.5. Waiver, etc. The Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that any Noteholder protect, secure, perfect or insure any Lien (or any property subject thereto) in favor of ING or any other Noteholder, or exhaust any right or take any action against the Company, any other Obligor or any other Person (including any other guarantor) or any collateral securing the Guaranteed Obligations.

SECTION 2.6. Postponement of Subrogation, etc. The Guarantor agrees that it will not exercise any rights which it may acquire by way of rights of subrogation under this Guaranty or any other Purchase Document to which it is a party, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Obligor, in respect of any payment made hereunder, under any other Purchase Document or otherwise, until following the payment in full of the Guaranteed Obligations. Any amount paid to the Guarantor on account of any such subrogation rights prior to the payment in full of the Guaranteed Obligations shall be held in trust for the benefit of ING and shall immediately be paid and turned over to ING in the exact form received by the Guarantor (duly endorsed in favor of ING, if required), to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with Section 4.5 of the Note Purchase Agreement; provided, however, that if

(a) the Guarantor has made payment to ING of all or any part of the Guaranteed Obligations; and

(b) the payment in full of the Guaranteed Obligations has occurred;

then at the Guarantor's request ING will, at the expense of the Guarantor, execute and deliver to the Guarantor appropriate documents (without recourse and without representation or warranty) necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Guaranteed Obligations resulting from such payment; provided, that the failure to receive such assignment shall not limit the Guarantor's right of subrogation. In furtherance of the foregoing, at all times prior to the payment in full of the Guaranteed Obligations the Guarantor shall refrain from taking any action or commencing any proceeding against the Company or any other Obligor (or its successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in the respect of payments made under this Guaranty to ING.

SECTION 2.7. Successors, Transferees and Assigns, etc. This Guaranty shall:

(a) be binding upon the Guarantor and its successors, transferees and assigns; and

(b) inure to the benefit of and be enforceable by ING.

Without limiting the generality of clause (b), ING may assign or otherwise transfer (in whole or in part) any Series No. 1 Note held by it to any other Person and such other Person shall thereupon become vested with all rights and benefits in respect thereof granted to ING under this Guaranty or otherwise, subject, however, to any contrary provisions in such assignment or transfer and to the provisions of the Note Purchase Agreement.

SECTION 2.8. Payments. The Guarantor agrees that all payments made by the Guarantor hereunder will be made in United States dollars to ING without set-off, counterclaim or other defense and in accordance with Sections 4.1 and 4.2 and 4.10 of the Note Purchase Agreement, free and clear of and without deduction for any Taxes, the Guarantor hereby agreeing to comply with and be bound by the provisions of Sections 4.1 and 4.2 and 4.10 of the Note Purchase Agreement in respect of all payments made by it hereunder and the provisions of which Sections are hereby incorporated into and made a part of this Guaranty by this reference as if set forth herein; provided, that references to the "Company" in such Sections shall be deemed to be references to the Guarantor, and references to "this Agreement" shall be deemed to be references to this Guaranty.

SECTION 2.9. Adjustment to Guaranteed Obligations. Notwithstanding anything else to the contrary contained herein, to the extent the Guaranteed Obligations guaranteed hereunder include any outstanding principal amount of the Series No. 1 Notes, such outstanding principal amount shall be reduced (for purposes of this Guaranty only) and the Guarantor shall not be liable to ING for the following amounts:

(a) the amount of any fees paid to ING or any Affiliate (net of syndication fees, underwriting commissions or similar fees) by any Triarc Party or any CPH Party in connection with any transaction occurring after the Closing Date for which ING or any Affiliate has a Material Role; and

(b) for each Eligible Transaction for which ING or any Affiliate does not have a Material Role, the greater of (i) an amount equal to 25% of the Applicable Fees in such Eligible Transaction, or (ii) the amount of any fees paid to ING (net of syndication fees, underwriting commissions or similar fees) by any Triarc Party or any CPH Party in connection with such Eligible Transaction.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

SECTION 3.1. Representations. In order to induce ING to enter into the Note Purchase Agreement, and to induce ING to enter into the Warrant Agreement, the Guarantor represents and warrants to ING

(a) Organization, Power, Authority, etc. The Guarantor is a corporation duly incorporated and in good standing under the laws of the jurisdiction of its incorporation and has full power and authority to enter into and perform its obligations under this Guaranty.

(b) Due Authorization. The execution and delivery by the Guarantor of this Guaranty and the performance by the Guarantor of its obligations hereunder have been duly authorized by all necessary corporate action, do not require any Approval, do not and will not conflict with, result in any violation of, or constitute any default under, any provision of any Organizational Document.

(c) Validity, etc. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, subject, however, as to enforcement only, to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and general equity principles (regardless of whether enforcement is sought in a proceeding at law or in equity).

SECTION 3.2. Guarantor Compensation and Consent. The Guarantor represents and warrants, and ING acknowledges and agrees, that the Guarantor has received no direct economic consideration for entering into this Guaranty other than (a) a cash fee equal to $200,000 and (b) warrants for purchase of up to 100,000 Common Shares of the Company. By execution and delivery of this Guaranty and notwithstanding any provision in the Note Purchase Agreement to the contrary, ING as the Purchaser consents to such compensation and such compensation is not a violation of Sections 6.2.5 or 6.2.11 of the Note Purchase Agreement.

ARTICLE IV
AGREEMENTS AS TO SERIES NO. 1 NOTES AND WARRANT

SECTION 4.1. Series No. 1 Notes.

(a) If at any time a Triarc Change in Control occurs, the Guarantor shall either (i) offer to purchase, and if such offer is accepted shall purchase, from the Noteholders, within 30 days of the date of such occurrence, all outstanding Series No. 1 Notes for a purchase price, payable in immediately available funds, equal to the Optional Redemption Price of such Series No. 1 Notes together with all unpaid interest accrued thereon to the date of such purchase; or (ii) to secure payment pursuant to this Guaranty, deposit into a collateral escrow account reasonably acceptable to the Guarantor and the Required Noteholders cash or Cash Equivalent Investments equal to the Guaranteed Obligations, as adjusted from time to time pursuant to Section 2.9. Upon payment of a principal amount of the Series No. 1 Notes (other than the PIK Notes) after the date of establishment of such escrow account equal to the Guaranteed Obligations, as adjusted from time to time pursuant to Section 2.9, all remaining amounts on deposit in the escrow account shall be returned to the Guarantor. Upon the consummation of any purchase pursuant to this Section 4.1(a), ING and such other Noteholder shall comply with Section 4.2 below.

(b) The Guarantor (or any third party designated by the Guarantor) shall have the right, upon 15 Business Days' prior written notice to ING and any other Noteholder, to purchase all (but not less than all) outstanding Series No. 1 Notes, for a purchase price, payable in immediately available funds, equal to the Optional Redemption Price of such Series No. 1 Notes together with all unpaid interest accrued thereon to the date of such purchase. Upon the consummation of any purchase pursuant to this Section 4.1(b), ING and such other Noteholder shall comply with Section 4.2 below.

(c) The Guarantor (or any third party designated by the Guarantor) shall have the right, at any time during which the Company may redeem Series No. 1 Notes pursuant to Section 4.7 of the Note Purchase Agreement, to purchase the Series No. 1 Notes identified in the written notice of such prospective assignment delivered to the Company in accordance with Section 4.7 of the Note Purchase Agreement, on the same terms and conditions as such prospective assignment.

SECTION 4.2. Warrants. Upon the consummation of any purchase of Series No. 1 Notes pursuant to Section 4.1(a) or (b) above during any time period identified below, ING or any other holder of the Warrants promptly shall deliver to the Guarantor (or to such third-party purchaser previously identified by the Guarantor) the following respective percentages of Warrants then owned by ING or any other holder of the Warrants:

Period:	Percentage of Warrants Returned:
From the Closing Date through 90 days thereafter	100%
From the 91st day after the Closing Date through the 270th day after the Closing Date	50%
Any time after the 270th day after the Closing Date	0%

SECTION 4.3. Maintenance of Cash Reserves. The Guarantor shall maintain in its accounts Cash Equivalent Investments, free of any and all Liens, in an aggregate amount no less than $10,000,000 (subject, however, to reduction by an amount equal to any reduction of Guaranteed Obligations pursuant to Section 2.9).

SECTION 4.4. Assignments. ING shall not assign any portion of its Notes or Warrants without (i) delivery of this Guaranty and the Stockholders Agreement to the assignee; and (ii) delivery by such assignee to Triarc of an acknowledgment of, and an agreement by the assignee, in a form reasonably acceptable to Triarc, to be bound by the terms and conditions of this Guaranty and the Stockholders Agreement, including, without limitation, the obligation to surrender all or part of the Warrants without additional consideration upon certain events pursuant to this Guaranty.

ARTICLE V
MISCELLANEOUS PROVISIONS

SECTION 5.1. Binding on Successors, Transferees and Assigns; Assignment. In addition to, and not in limitation of, Section 3.7, this Guaranty shall be binding upon the Guarantor and its successors, transferees and assigns and shall inure to the benefit of and be enforceable by and against ING and its successors, transferees and assigns (to the full extent provided pursuant to Section 2.7); provided, however, that the Guarantor may not assign any of its obligations hereunder without the prior written consent of ING.

SECTION 5.2. Amendments, etc. No amendment to or waiver of any provision of this Guaranty, nor consent to any departure by the Guarantor herefrom, shall in any event be effective unless the same shall be in writing and signed by ING or successors and assigns and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 5.3. Notices. All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed or telecopied or delivered (i) in the case of the Guarantor, to the Guarantor in care of the Company at the address or facsimile number of the Company specified in the Note Purchase Agreement and (ii) in the case of ING, to ING at the address or facsimile number of ING specified in the Note Purchase Agreement. All such notices and other communications, when mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any such notice or communication, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter.

SECTION 5.4. No Waiver; Remedies. In addition to, and not in limitation of, Section 2.3 and Section 2.5, no failure on the part of any Noteholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 5.5. Captions. Section captions used in this Guaranty are for convenience of reference only, and shall not affect the construction of this Guaranty.

SECTION 5.6. Severability. Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 5.7. Governing Law, Entire Agreement, etc. THIS GUARANTY SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). THIS GUARANTY CONSTITUTES THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.

SECTION 5.8. Forum Selection and Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE NOTEHOLDERS OR THE GUARANTOR SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY PROPERTY MAY BE BROUGHT, AT ING'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH PROPERTY MAY BE FOUND. THE GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. THE GUARANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR OUTSIDE OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE GUARANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE GUARANTOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTY.

SECTION 5.9. Waiver of Jury Trial. THE GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE NOTEHOLDERS OR THE GUARANTOR. THE GUARANTOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ING ENTERING INTO THE NOTE PURCHASE AGREEMENT.

SECTION 5.10. Counterparts. This Guaranty may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

TRIARC COMPANIES, INC.

By: /s/ John L. Barnes, Jr.
_____
Name: John L. Barnes, Jr.
Title: Executive Vice President

ACCEPTED AND AGREED:

ING (U.S.) CAPITAL, LLC,

By: /s/ David Balestrery
_____
Name: David Balestrery
Title: Vice President

EXHIBIT 10.8

FIRST AMENDMENT TO LOAN SALE AGREEMENT

This FIRST AMENDMENT TO LOAN SALE AGREEMENT (this "Amendment") is made and entered into as of the 13th day of January, 2000 by and among MBNA AMERICA BANK, N.A., as seller (the "Seller") and MIDLAND CREDIT MANAGEMENT, INC., as buyer (the "Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer are parties to the Loan Sale Agreement, dated as of September 1, 1999 (the "Loan Sale Agreement");

WHEREAS, Seller and Buyer wish to amend the Loan Sale Agreement effective as of the Amendment Effective Date (as defined in Section 5) to provide for suspension or the termination of Buyer's obligations to purchase Additional Loans in certain circumstances and certain other amendments;

NOW, THEREFORE, in order to reflect the mutual understanding of the parties hereto, the undersigned hereby agree and acknowledge that:

Section 1. Certain Defined Terms.

Capitalized terms which are used and not otherwise defined in this Amendment shall have the respective meanings ascribed thereto in the Loan Sale Agreement.

Section 2. Amendment of Loan Sale Agreement.

A. From and after the Amendment Effective Date, the Loan Sale Agreement shall be modified by deleting Section 19.1 and Section 19.3 of the Loan Sale Agreement in their entirety and replacing them with the following provision:

> Section 19.1 Term of Agreement. (a) Notwithstanding that this Agreement may be terminated at any time in accordance with the provisions of Article 12 hereof, the initial term of this Agreement shall commence on the first Transfer Date and shall end on February 20, 2001; provided, however, that Buyer or Seller may cancel its obligation to purchase or sell, as the case may be, Additional Loans hereunder by delivering written notice of the same to the other party not later than the 15th day of the month prior to the month in which termination is to occur. After delivery of such notice, except for the impending sale which is to occur in the month the notice is delivered, the obligation of Buyer to purchase Additional Loans hereunder and the obligation of Seller to sell Additional Loans hereunder shall terminate. In the event that Buyer elects to terminate the Agreement pursuant to this Section 19(a), any and all of Seller's obligations, duties or responsibilities relating to: (i) adjustments to purchase price or repurchases of previously sold loans under Sections 8.1 and 8.2 of the Agreement shall terminate upon Seller's receipt of notice; and (ii) to provide documentation pursuant to Section 3.2 and Exhibit E of the Agreement shall terminate upon Seller's receipt of notice.

(b) The Buyer may elect not to purchase Additional Loans during March 2000 by giving Seller written notice of such election not later than February 29, 2000. In the event that Buyer elects not to purchase Additional Loans pursuant to this Section 19(b), any and all of Seller's obligations, duties or responsibilities relating to: (i) adjustments to purchase price or repurchases of previously sold loans under Sections 8.1 and 8.2 of the Agreement shall terminate upon Seller's receipt of notice; and (ii) to provide documentation pursuant to Section 3.2 and Exhibit E of the Agreement shall terminate upon Seller's receipt of notice. Seller's obligations, duties or responsibilities under Sections 3.2, 8.1 and 8.2 of the Agreement and Exhibit E shall be reinstated upon Buyer's next purchase of Additional Loans pursuant to the terms and provisions of the Agreement.

(c) The parties expressly agree that the provisions of Articles 5, 10, 11, 14, 15, 16 and 21 shall survive any termination of the Agreement. Seller agrees to provide to Buyer, upon Buyer's written request, copies of credit applications and statements for any of the Loans sold to Buyer, to the extent such documents are in Seller's possession, upon Seller's receipt of payment of $10.00 per application or statement.

B. From and after the Amendment Effective Date, the Loan Sale Agreement shall be modified by adding the following sentence to the end of the first paragraph of Section 8.2:

Buyer may not submit any notification for repurchase of any Loan prior to the 175th day following the Transfer Date of such Loan.

Section 3. Effect of Amendment.

Upon effectiveness of this Amendment, the Loan Sale Agreement shall be, and be deemed to be, modified and amended in accordance herewith and the respective rights, limitations, obligations, duties, liabilities and immunities of the parties to the Loan Sale Agreement shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and deemed to be part of the terms and conditions of the Loan Sale Agreement for any and all purposes.

Section 4. Representations and Warranties of Buyer and Seller

Each of Buyer and Seller hereby represents and warrants as to itself that this Amendment, and any other agreements or instruments executed or to be executed by it as contemplated hereby, have been duly authorized, executed and delivered by such party, and each of its obligations hereunder constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or law).

Section 5. Conditions Precedent.

This Amendment shall be effective (the "Amendment Effective Date") upon execution by both parties and Seller's receipt of $7,555,301.98 in immediately available funds which will be wire transferred to Seller's account representing payment in full for the Additional

Loans which were required to be purchased by Buyer pursuant to the terms of the Agreement on November 10, 1999, December 10, 1999, December 17, 1999, and January 15, 2000 and which will be required to be purchased on February 15, 2000. On the Amendment Effective Date, the Seller shall execute and deliver to Buyer a Receipt and Acknowledgement of Amendment Effective Date in the form attached hereto as Exhibit A.

Buyer's obligation under the Agreement to purchase Additional Loans in February 2000 shall be deemed by the parties to be fulfilled upon Seller's delivery of a Receipt and Acknowledgement of Amendment Effective Date after Buyer makes the advance payments for such Additional Loans as is required for this Amendment to be effective pursuant to the terms and conditions of this Section 5. Seller shall deliver immediately thereafter accounts having a total face value of $14,002,896.54 (representing the January purchase obligation) and the Seller, on or before February 15, 2000, shall deliver the remaining accounts (representing the February purchase obligation having an approximate face value of approximately $14,000,000.00).

Section 6. Binding Effect. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

Section 7. Governing Law. This Amendment shall be construed, and the rights and obligations of Seller and Buyer hereunder determined, in accordance with the laws of the State of Delaware.

Section 8. Section Headings. The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

Section 9. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Buyer and Seller have caused this Amendment to the Loan Sale Agreement to be duly executed by their respective officers as of the day and year first above written.

MBNA AMERICA BANK, N.A.

By: /s/ Robert V. Ciarrocki
_____
Name: Robert V. Ciarrocki
Title: SEVP

MIDLAND CREDIT MANAGEMENT, INC.

By: /s/ R. Brooks Sherman
_____
Name: R. Brooks Sherman
Title: Executive Vice President

EXHIBIT A

RECEIPT AND ACKNOWLEDGMENT

MBNA AMERICA BANK, N.A. hereby acknowledges receipt of wire transfer(s) of federal funds in the aggregate amount of $ $7,555,301.98 from MIDLAND CREDIT MANAGEMENT, INC. and further acknowledges that the condition precedent set forth in Section 5 of the First Amendment to the Loan Sale Agreement (the "Amendment") has been satisfied and that the Amendment is in full force and effect.

MBNA AMERICA BANK, N.A.

By:_____
Name:
Title: